

1                                   IN THE UNITED STATES DISTRICT COURT  
2                                   FOR THE NORTHERN DISTRICT OF TEXAS  
3                                   AMARILLO DIVISION  
4   UNITED STATES OF AMERICA,       )   2:22-cr-00042-Z-BR-1  
5                                   Government,                    )  
6   VS.                                )   Thursday, January 18, 2024  
7   MANDIS CHARLES BARROW,           )   1:46 p.m. - 4:20 p.m.  
8                                   Defendant.                    )   SENTENCING HEARING

9  
10                               TRANSCRIPT OF PROCEEDINGS  
11                               BEFORE THE HONORABLE MATTHEW J. KACSMARYK  
12                               UNITED STATES DISTRICT JUDGE

13  
14   A P P E A R A N C E S:

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24   Proceedings reported by mechanical stenography and transcript  
25   produced by computer.

P R O C E E D I N G S

THE COURT: The Court calls Criminal Action Number 2:22-cr-042-Z-BR-1, United States of America vs. Mandis Charles Barrow, for sentencing.

Are the parties ready to proceed?

MS. BELL: The United States is ready, Your Honor.

MR. ELZA: Slater Elza with the Underwood Law Firm here on behalf of Mr. Barrow and we're ready to proceed.

THE COURT: Counsel for the United States is present. Counsel for defendant Mandis Charles Barrow is present.

Mr. Barrow, please acknowledge your presence in court today by stating your full name for the record.

THE DEFENDANT: Mandis Charles Barrow.

THE COURT: Mr. Barrow, you may participate in this hearing seated or standing, whatever is most comfortable and consistent with the advice of counsel.

The Court will make an announcement of its tentative determination on the pending motion for downward variance and then we'll proceed with sentencing.

The Court did review defendant's sentencing memorandum and request for downward variance set forth in Document Number 165. Based on the information contained in the PSR and the addendum, the Court has tentatively determined that a nonguidelines downward variance is not sufficient pursuant to the factors set forth at 18 U.S.C. section 3553(a), but the

1 Court did make this announcement of its tentative determination  
2 to allow the parties adequate opportunity to respond with  
3 argument and additional information. The time to do so is  
4 after the Court calculates and announces the advisory  
5 guidelines range. We will then take up any variance issues at  
6 that time.

7 Now, Mr. Barrow, you appeared before this Court for a  
8 criminal trial on September 5th, 2023. On September 7, 2023,  
9 you were convicted by a jury of your peers on three counts:  
10 Number one, conspiracy to distribute and possess with intent to  
11 distribute 500 grams or more of methamphetamine, in violation  
12 of 21 U.S.C. Section 846; Number two, distribution and  
13 possession with intent to distribute 500 grams or more of  
14 methamphetamine, in violation of 21 U.S.C. Sections 841(a)(1)  
15 and 841(b)(1)(A)(viii), that's viii; Number three, possession  
16 with intent to distribute 500 grams or more of methamphetamine,  
17 in violation of 21 U.S.C. Sections 841(a)(1) and  
18 841(b)(1)(A)(viii), also viii.

19 Now, Ms. Bell, did the Government receive a timely  
20 copy of the PSR and addendum?

21 MS. BELL: Yes, Your Honor.

22 THE COURT: Other than the Government's written and  
23 timely responses in Documents Number 161, 163 and 166, does the  
24 Government have additional information, responses,  
25 clarifications or arguments relevant to the PSR or addendum?

1 MS. BELL: No, Your Honor.

2 THE COURT: Does the Government adopt the facts and  
3 conclusions set forth in the PSR as modified by that addendum?

4 MS. BELL: Yes, Your Honor.

5 THE COURT: Now, Mr. Elza, did you and your client  
6 receive timely copies of both the PSR and addendum?

7 MR. ELZA: Yes, Your Honor.

8 THE COURT: And did you have a full and complete  
9 opportunity to review the PSR and addendum with your client?

10 MR. ELZA: Yes, Your Honor.

11 THE COURT: And did you explain to your client how  
12 the PSR and addendum work in this sentencing hearing?

13 MR. ELZA: Yes, Your Honor.

14 THE COURT: Are you confident that your client fully  
15 understands both the PSR and addendum?

16 MR. ELZA: Yes, Your Honor.

17 THE COURT: Okay. So there were a series of  
18 timely-filed objections, and I am grouping those objections as  
19 follows. There are factual clarifications that are arguably  
20 rendered moot by the addendum, and then there are a series of  
21 other factual clarifications that may require findings of the  
22 Court but do not otherwise affect -- or do not affect the  
23 calculation of the advisory guidelines range. And then there  
24 is a third category of objections that could potentially affect  
25 the calculation of the advisory guidelines range. And we'll

1 take them up in those three groups.

2 so first, regarding defendant's Objections 13 and 14  
3 requesting factual clarification, the Court has tentatively  
4 determined that the information was corrected in the addendum  
5 and that Objections 13 and 14 are now mooted by that addendum.

6 Mr. Elza, do you agree that the addendum corrected  
7 the information in Objections 13 and 14 and they are thereby  
8 mooted?

9 MR. ELZA: Yes, Your Honor.

10 THE COURT: And does the Government agree that the  
11 addendum adequately addressed Objections 13 and 14 and that  
12 those objections are now moot?

13 MS. BELL: Yes, Your Honor.

14 THE COURT: Okay. The Court so rules. Objections 13  
15 and 14 are mooted by the addendum.

16 Next, also in the category of factual clarifications  
17 but not clarifications that would affect the calculation of the  
18 advisory range, Objections 1, 2, 4, 10, 11 and 12 requesting  
19 factual clarification not rendered moot by the addendum.

20 Mr. Elza, does the defendant continue to urge these  
21 factual clarifications?

22 MR. ELZA: He does, Your Honor.

23 THE COURT: Okay. So I have further grouped those  
24 objections by category. I will list for counsel the relevant  
25 categories which should include five matters of factual

1 clarification. First, defendant's argument about inconsistent  
2 stories during the Rhome traffic stop. And here, I'm  
3 referencing the Texas city of Rhome, R-H-O-M-E. Next, the  
4 facts relevant to multiple backpacks that were or were not  
5 delivered to Vincent Chavez, Jr. Next, facts relevant to  
6 whether defendant did or did not enlist Vincent Chavez, Jr.  
7 Next, facts relevant to defendant's failure to report at least  
8 as set forth in the PSR. And finally, objections relevant to a  
9 factual clarification specific to the Tulia drug bust as it's  
10 described by defendant.

11 So this'll be a lengthy set of tentative  
12 determinations on each of those factual clarifications. I'll  
13 instruct counsel for the Government and defendant to take good  
14 notes. I will provide you my factual -- I'll provide you my  
15 tentative ruling on each factual determination, and then after  
16 all are done, invite responsive argument. I'll just instruct  
17 counsel to keep close notes since there are multiple  
18 objections, multiple paragraphs and multiple analyses at issue.

19 I will read into the record my tentative  
20 determination on all of these factual clarification categories,  
21 then invite argument. If at any time you need the Court to  
22 slow down so you can take better notes, please signal to my  
23 courtroom deputy and I'll make certain that I make the  
24 necessary accomodation.

25 So first category of factual clarification relevant

1 to inconsistent stories during the Rhome traffic stop, this is  
2 relevant to defendant's timely-filed Objection 1 to PSR  
3 paragraph 7 which stated that defendant and his codefendant  
4 gave inconsistent statements during a traffic stop in Rhome,  
5 Texas, specifically that this PSR paragraph 7 states that  
6 these, quote, "stories" differed in several ways, including the  
7 reason for their trip when they got gas and drinks and why they  
8 went from one gas station to another.

9 The Court has tentatively determined it should  
10 overrule defendant's Objection 1 for the following reasons.

11 This Court has already adjudicated the alleged  
12 inconsistency of statements made during the Rhome traffic stop.  
13 Quoting from this Court's order on the motion to suppress in  
14 Document Number 65, quote, "By this Court's assessment, there  
15 were at least ten inconsistencies between codefendant's  
16 statements. Saldana explained they traveled to the Love's gas  
17 station because they had not filled the gas tank at the Big Z  
18 station. Barrow denied traveling to the second station for  
19 more gas, explaining he filled the tank at Big Z. Saldana  
20 later changed her story claiming they already filled their tank  
21 and weren't coming to get gas." And it goes on to note other  
22 inconsistencies.

23 The Court finds that the information contained in the  
24 PSR does bear sufficient indicia of reliability for this Court  
25 to use at sentencing and that the defendant has not overcome

1 that indicia of reliability by merely arguing that, quote,  
2 "arresting" -- "the arresting officer was clear on multiple  
3 occasions that the stories of the defendants were similar."  
4 The Court is guided by United States vs. Solis, 299 F.3d 420, a  
5 Fifth Circuit case from 2002 that explains that mere objections  
6 do not suffice as competent rebuttal evidence; United States  
7 vs. Cabrera, 288 F.3d 163; and United States vs. Washington, 48  
8 F.3d 309 holding same.

9 Even if the PSR did not bear sufficient indicia of  
10 reliability, this Court would still overrule defendant's  
11 objections based on this Court's review of the video of the  
12 traffic stop and this Court's hearing of testimony by the  
13 arresting officer at trial and at the hearing on suppression,  
14 all of which support the PSR writer's conclusion in paragraph 7  
15 that codefendants did provide inconsistent reasons for stopping  
16 at the Love's travel center.

17 Next category, the multiple backpacks delivered to  
18 Vincent Chavez, Jr. This pertains or at least correlates to  
19 Objection 2 to PSR paragraph 14 which states that defendant  
20 took multiple backpacks to Vincent Chavez, Jr.'s house. The  
21 Court has tentatively determined that it should overrule  
22 defendant's Objection Number 2 because the information was  
23 received from otherwise reliable sources, and defendant's  
24 objections are insufficient to overcome the general rule that  
25 information contained in the PSR bear sufficient indicia of



1 reliability.

2 As with the last objection, the Court here is guided  
3 by the Solis, Cabrera and Washington cases explaining that mere  
4 objections do not suffice as competent rebuttal evidence.  
5 Additionally, that PSR paragraph 14 states that the defendant  
6 admitted he took backpacks to Chavez, Jr. and must be weighed  
7 alongside PSR paragraph 13 which states that the Drug  
8 Enforcement Agency discovered two backpacks containing  
9 narcotics in Chavez, Jr.'s residence. Defendant is incorrect  
10 to assert that there is no factual basis for this statement and  
11 that it is incorrect.

12 The Court is also relying on its presence in  
13 presiding over the suppression hearing and trial, and by the  
14 Court's recollection, PSR paragraph 14 and 13 accurately  
15 summarize testimony that at all times was subject to  
16 cross-examination.

17 The Court overrules defendant's Objection 2 to PSR  
18 paragraph 14.

19 Number three, whether defendant enlisted or did not  
20 enlist Vincent Chavez, Jr. This correlates to defendant's  
21 Objection 4 to PSR paragraph 18 which states that defendant,  
22 quote, "enlisted Vincent Chavez, Jr. to engage in illicit  
23 conduct." The Court has tentatively decided that it should  
24 overrule defendant's Objection Number 4 because the information  
25 contained in PSR paragraph 18 was derived from otherwise

1 reliable sources, and it is consistent with testimony presented  
2 during the defendant's trial and is further supported by  
3 exhibits presented by the Government through its papers filed  
4 ahead of this sentencing hearing.

5 Here, defendant centers his objection on the  
6 undisputed fact that law enforcement had been investigating  
7 Vincent Chavez since at least April 2020 and that defendant was  
8 in custody from 2011 until September 2020. This is reflected  
9 in Document Number 162 at page 2. From that, defendant argues  
10 he could not have enlisted Vincent Chavez, Jr. in any illicit  
11 conduct because Chavez was involved in the DTO -- by "DTO" the  
12 Court at all times means "Drug Trafficking Organization" --  
13 before the defendant was released from prison.

14 But this argument misunderstands the meaning of the  
15 verb "enlist," which merely means, quote, "to secure the  
16 support in aid of" or, quote, "employ or utilize in advancing  
17 some interest." Here, the Court is quoting directly from  
18 Webster's Third New International Dictionary, the 1981 edition.

19 Here, there is ample evidence that defendant employed  
20 and utilized the support of Vincent Chavez, Jr. in illicit  
21 activities. As outlined in the Government's brief, Vincent  
22 Chavez, Jr. admitted to acting as a, quote, "runner" for  
23 defendant and Victor Chavez. This is -- this is -- this finds  
24 evidentiary support in Document Number 163 at page 10 citing  
25 Exhibit A.

1           Additionally, Chavez also stated he was storing drugs  
2 for defendant, which were ultimately recovered by law  
3 enforcement. DEA officers also observed Chavez sell  
4 methamphetamine, which Chavez claims to have only done with the  
5 permission of defendant. Chavez also described himself as a  
6 quote, "middleman" between defendant and the distributors.  
7 While defendant may be correct that he was not the first person  
8 to recruit Vincent Chavez, Jr. into illicit activity, the PSR,  
9 the suppression hearing, defendant's trial and the exhibits  
10 produced by the Government, which this Court reviewed from  
11 start to finish, contain ample evidence that defendant did  
12 enlist the help of Vincent Chavez, Jr. to traffic narcotics in  
13 furtherance of the instant offense, at least as that term is  
14 properly applied in this sentencing context.

15           Next, here, this is Factual Clarification Category 4,  
16 the alleged failure to report. Here, defendant's Objection  
17 Number 10 relates to PSR paragraph 41 stating that defendant  
18 missed some tests due to memory issues but nonetheless  
19 proactively worked with his probation officer to test after  
20 missing these tests. The Court has tentatively determined it  
21 should overrule defendant's Objection 10 because defendant has  
22 produced no evidence or argument that the information described  
23 in PSR paragraph 41 is incorrect.

24           Instead, defendant asserts reasons for missing drug  
25 testing appointments, but as noted in the addendum, quote,

1 "Regardless of defendant's reasoning behind his failure to  
2 comply with conditions of supervised release, he nonetheless  
3 committed these technical violations." Here, defendant makes  
4 no argument he did not commit the technical violations  
5 described in that PSR paragraph 41. Even if he had, the  
6 technical violations described therein were obtained from  
7 otherwise reliable sources, and the probation officer further  
8 supplemented those conclusions in the addendum that followed.  
9 That addendum stated that defendant failed to report for drug  
10 testing on October 8 and 23 of 2020; December 10, 2020; and  
11 January 8, 2021. Using the aforementioned Solis, Cabrera and  
12 Washington cases as guideposts, this Court finds that PSR  
13 paragraph 41 bears sufficient indicia of reliability for use at  
14 sentencing.

15           Next, and this would be the fifth factual  
16 clarification category, the dismissed charges are what  
17 defendant and counsel have referred to as the Tulia drug bust,  
18 and that is spelled T-U-L-I-A. This pertains to defendant's  
19 objections 11 and 12 to PSR paragraphs 50, 51 and 52. Those  
20 paragraphs describe charges that were dismissed against  
21 defendant. And for clarification, one of the dismissed charges  
22 is not Tulia, although other -- other parts of that paragraph  
23 are a direct reference to the Tulia investigation.

24           The Court has tentatively decided it should overrule  
25 defendant's objections because the information described in PSR

1 paragraphs 50, 51 and 52 were obtained from otherwise reliable  
2 sources, and again, defendant has failed to marshal sufficient  
3 evidence to overcome that indicia of reliability.

4 Specifically, defendant objects to these PSR  
5 paragraphs asserting that the charges described in PSR  
6 paragraph 50 and 51 were dismissed when authorities determined  
7 defendant was not the person involved in criminal conduct and  
8 asserts that the charges described in PSR paragraph 52 were  
9 dismissed when, quote, "Authorities determined that the  
10 narcotics agent Tom Coleman had perjured himself, compromising  
11 over 40 criminal cases."

12 while these PSR paragraphs do state that the charges  
13 against defendant were dismissed, this Court has not received  
14 or reviewed any evidence or documentation from defendant  
15 showing the reasons for the dismissal. Here, the probation  
16 officers learned of the charge through a rap sheet that was  
17 made available to the officer in anticipation of the PSR.  
18 That's reflected in the following addendum.

19 Although the officer did request additional details  
20 about these three arrests, those requests remain unfulfilled as  
21 of the instant date, and because the probation officer did not  
22 receive additional documentation showing the reason for those  
23 case dismissals and because defendant has failed to marshal any  
24 evidence supporting his bare assertions, this Court has decided  
25 to overrule defendant's Objections 11 and 12 as they pertain to

1 PSR paragraphs 50, 51 and 52.

2 Now, in reaching these tentative determinations in  
3 these five categories, the Court at all times was guided by its  
4 recollection and observation of testimony and evidence adduced  
5 at the suppression hearing and at trial, and for all of the  
6 aforementioned reasons, the Court is overruling -- or has  
7 tentatively determined to overrule defendant's Objection 1, 2,  
8 4, 10, 11 and 12 for the aforementioned reasons.

9 At this time, I'll invite responsive argument or  
10 information that is not cumulative of the extensive written  
11 briefing already submitted to the Court.

12 Ms. Bell, you may proceed.

13 MS. BELL: Nothing outside the written submissions,  
14 Your Honor.

15 THE COURT: And, Mr. Elza, you may proceed with any  
16 additional information or argument that would not be  
17 cumulative.

18 MR. ELZA: Okay, and I'll certainly attempt to not be  
19 cumulative, really probably attempt to add some context in  
20 here.

21 So on Objection Number 1 which related to PSR  
22 paragraph 7, the position that Mr. Barrow takes is that there  
23 was testimony that their stories were substantially similar.  
24 The parts about the gas stations is we had two people talking  
25 about three gas stations and a law enforcement talking about

1 two. Those we just -- we do not think were inconsistent, and  
2 we think that the paragraph in the PSR does not provide an  
3 accurate reflection of what the evidence was at trial.

4 On Objection Number 2, which ties to paragraph 14,  
5 understand and respect the Court's citation of the interview  
6 from December that Mr. Barrow gave. Mr. Barrow has provided  
7 the Court today -- provided to counsel, which I forwarded to  
8 the Court today, essentially a written allocution that talks  
9 about that interview and why what he said was not true. We  
10 think that -- again, we acknowledge that he said it, but the  
11 evidence in context we believe would be that there was no  
12 delivery of one, much less two backpacks. He did deny that in  
13 his objection.

14 Moving on to 4, the Court cited to the reliance on  
15 reliable testimony, and we would respectfully point out that  
16 that is the words of Vincent, who was visibly upset and being  
17 removed by arrest from his family and that what he said was  
18 self-serving in an attempt to deflect blame from himself and is  
19 not otherwise reliable. There's no evidence that was ever  
20 produced that I can remember of any type of phone call to  
21 Mr. Barrow on that day. Mr. Chavez, Jr. -- Vincent Chavez, Jr.  
22 was a major drug player and higher-up in the DTO long before  
23 Mr. Barrow was ever out of incarceration.

24 10, again, understand and respect the Court's  
25 position on that and that there is, in fact, a technical

1 violation, and I think we -- we would look foolish to deny that  
2 otherwise. However, we believe that the added information  
3 submitted by Mr. Barrow provides context to that, which is  
4 important to understanding the information referenced in the  
5 PSR.

6 And then moving to the combined Objections 11 and 12  
7 which deal with paragraphs 50, 51 and 52, again, understand the  
8 Court's position that we did not submit evidence on those. I  
9 think in fairness to our position, it sounds like the PSR  
10 drafter attempted to find that information as well.

11 Historically, right or wrong, my position on those is when we  
12 know information, even if it's anecdotally and can provide that  
13 even if we don't have access to those records, we list those as  
14 an objection or request for clarification or context to allow  
15 for the opportunity for the PSR drafter to maybe be able to  
16 find or confirm that information. And that's why those  
17 objections were included.

18 Again, it's my hope and my intention was not to be  
19 cumulative. We do adopt and incorporate our prior filed  
20 objections, but I thought it was important just to address  
21 those one or two issues on each of our objections.

22 THE COURT: Any response from the Government to the  
23 additional information or argument provided by defense counsel?

24 MS. BELL: Your Honor, with regard to Objection  
25 Number 1, my recollection of the testimony is that Mr. Elza



1 asked Ronnie Rapert whether or not there could have been a gas  
2 station in Fort Worth that they had stopped at, and that  
3 Mr. Rapert opined that there could have been but did not  
4 testify that there was a third gas station. And so there was  
5 no evidence of a third gas station.

6 Your Honor, with regard to Objection Number 4, with  
7 regard to what Vincent A. Chavez told law enforcement, that was  
8 long before Mr. Barrow's arrest, Your Honor. He gave an  
9 interview, which is attached to the Government's response.  
10 Your Honor, he gave a very gradual confession, Your Honor,  
11 which is very typical, and he gave statements against his own  
12 penal interest, Your Honor, that bear indicia of reliability.  
13 And, in fact, he is serving prison time based on his -- the  
14 evidence against him and his own statements that he made, Your  
15 Honor.

16 I think that's it, Your Honor. Thank you.

17 THE COURT: Okay. For the reasons previously stated  
18 as the Court's tentative determination and supplemented by the  
19 facts and arguments provided by the AUSA in response to defense  
20 counsel's supplemental arguments, this Court adopts its  
21 tentative determination as its final ruling and is basing that  
22 ruling on Document Number 163 and the addendum, which the Court  
23 incorporates by reference.

24 And the Court adopts the tentative finding as  
25 supplemented by those documents and the arguments of the

1 Government as its final finding and hereby adopts the findings  
2 and conclusions set forth in PSR paragraphs 7, 14, 18, 41, 50,  
3 51 and 52 alongside the relevant addendum paragraphs, and this  
4 Court thereby overrules defendant's Objections 1, 2, 4, 10, 11  
5 and 12, none of which have a bearing on this Court's  
6 calculation of the advisory guidelines range.

7 Now, in the third and final category of timely  
8 objections submitted by defendant, the Court has grouped these  
9 objections by category. These do potentially affect the  
10 calculation of the advisory guidelines range, and because they  
11 will require lengthy adjudication by the Court, I will invite  
12 any additional noncumulative information or argument after each  
13 one.

14 So continue to take good notes, but I will pause  
15 category by category as we go through these objections because  
16 they do potentially affect this Court's calculation of the  
17 advisory range.

18 Does defendant continue to urge the objections  
19 affecting the guidelines calculations?

20 MR. ELZA: He does, Your Honor.

21 THE COURT: Okay. So here, as we did in the last  
22 category, I'll set forth the Court's tentative finding. This  
23 is -- the Court's analysis is based on defendant's written  
24 objections in Document Number 162 and the Government's written  
25 response in Document Number 163 and the addendum.

1 In the first category, inclusion of 200 kilograms of  
2 controlled substances, here, defendant's Objections 3 and 7  
3 relate to PSR paragraph 17 and 26, which attributes 200  
4 kilograms of methamphetamine to the defendant as part of his  
5 relevant conduct. Based on the information contained in the  
6 PSR, addendum and the Government's response, and in light of  
7 relevant case law, this Court has tentatively determined it  
8 should overrule defendant's Objections Number 3 and Number 7  
9 for the following reasons.

10 As conceded by defendant, PSR paragraph 17 and 26  
11 accurately report admissions by defendant of trafficking,  
12 quote, "at least 300, probably 2- to 300 keys of  
13 methamphetamine between September 2020 and December 16, 2022 as  
14 part of his continuing role in the DTO." This is reflected in  
15 Document Number 162 and at page 2 where the statements are  
16 attributable to Mr. Barrow.

17 Under Supreme Court and Fifth Circuit law, a  
18 sentencing court may properly approximate drug quantities when  
19 calculating relevant conduct when narcotics recovered in a drug  
20 seizure do not reflect the skill of the actual offense conduct.  
21 This is a straightforward application of Guideline Section  
22 2D1.1, Comment Note 5. A Court may do so by extrapolating,  
23 quote, "from any information that has sufficient indicia of  
24 reliability to support its probable accuracy." This is a  
25 direct quote from United States vs. Barfield, 941 F.3d 757, a

1 Fifth Circuit case from 2019 quoting United States vs. Valdez,  
2 a Fifth Circuit case from 2006 available at 453 F.3d 252.

3 Applied here, the Court expressly finds that the  
4 statements made by defendant do bear sufficient indicia of  
5 reliability to support their probable accuracy and therefore  
6 may be used by this sentencing court to determine relevant  
7 conduct. The Court further finds that these drug quantities  
8 were trafficked as part of a series of drug trafficking  
9 offenses that were all part of a common scheme or course of  
10 conduct sufficient to be encompassed as relevant conduct.

11 In applying these principles of course of conduct or  
12 common scheme, the Court at all times was guided by United  
13 States vs. Nava, 957 F.3d 581, a Fifth Circuit case from 2020;  
14 United States vs. Rhine, a Fifth Circuit case from 2009, 583  
15 F.3d 878; and United States vs. Alaniz, A-L-A-N-I-Z, a Fifth  
16 Circuit 2013 case which may be found at 726 F.3d 586.

17 If anything, the Court finds that it is most likely  
18 that the PSR significantly undercounts defendant's relevant  
19 conduct because defendant originally told law enforcement he  
20 trafficked over 300 kilograms of methamphetamine rather than  
21 the more conservative estimate of 200 kilograms used by the  
22 PSR. Here, the Court is referencing Document Number 163 at  
23 page 7. When defendant revised his estimate to 200 to 300  
24 kilograms, he emphasized twice that he was -- that he had  
25 easily trafficked this amount, and in this case the PSR writer

1 used the more conservative bookend.

2 Here, defendant objects to reliance on these  
3 statements for two reasons. First, he argues that he made  
4 these statements while under death threats from members of the  
5 DTO. Second, he argues that the statements are not true since  
6 he exaggerated the quantity of drugs he actually trafficked in  
7 an effort to induce federal agents into incarcerating members  
8 of the DTO. These arguments are set forth in Document Number  
9 162 at page 2.

10 The Court disagrees for the following reasons.

11 First, defendant produces no evidence to show that he  
12 was under threat of death from the DTO. As noted in the  
13 Government response, defendant never mentioned threats against  
14 his life during the interview where he admitted to drug  
15 quantities. The Government's response is found at Document  
16 Number 163, page 7.

17 Defendant further made no argument during his trial  
18 showing or proving that he trafficked drugs only because of  
19 death threats. And additionally, defendant decided not to rely  
20 on a defense of duress. To date, defendant has produced zero  
21 evidence that anyone threatened him in an effort to induce him  
22 to control -- I'm sorry, to traffic controlled substances.  
23 Quite to the contrary, defendant stated multiple times in  
24 multiple interviews with law enforcement that he owed the DTO  
25 monetary debts incurred during his term of imprisonment but

1 made no indication that he needed to repay this amount under  
2 threat of harm.

3           So here, the Court is relying on its own recollection  
4 of the trial proceedings, testimony and evidence presented at  
5 that trial and also Document Number 163-4 at page 8, which  
6 states, quote, "So you owe him roughly about 60,000?" "Yes,  
7 somewhere around that," end quote. That defendant felt an  
8 obligation to repay debts to individuals in the DTO unconnected  
9 from even allegations of threats of violence is insufficient to  
10 show that defendant's admissions should be disregarded by the  
11 sentencing court. Second, defendant's argument that his  
12 statements were exaggerated or that he inflated relevant drug  
13 quantities likewise fails under binding Fifth Circuit  
14 precedent.

15           Here, defendant argues he exaggerated or inflated  
16 drug quantities to persuade law enforcement to arrest other DTO  
17 conspirators as a basis for disregarding admitted drug  
18 quantities, but the Fifth Circuit rejected a similar argument  
19 in United States vs. Barfield, 941 F.3d 757, a Fifth Circuit  
20 case from 2019. Specifically, the Fifth Circuit explained  
21 where a defendant does not introduce evidence to rebut -- to  
22 rebut his post-arrest admission of relevant conduct, the  
23 district court may consider it at sentencing. Counsel may find  
24 that direct quote at pinpoint 764. Applied here, defendant has  
25 not presented any evidence sufficient to rebut his admission of

1 drug trafficking.

2 For those reasons and the reasons set forth in the  
3 Government's response and the probation officer's addendum,  
4 this Court has tentatively determined that it should overrule  
5 defendant's Objections Number 3 and Number 7.

6 I'll now invite --

7 MR. ELZA: Your Honor?

8 THE COURT: Yes.

9 MR. ELZA: I'm sorry. I turned to talk to my client.  
10 I missed the last part that you said, and I just want to make  
11 sure I don't miss something important.

12 THE COURT: If you could tell me what you last  
13 recall, I can return to that point. I was, in closing, citing  
14 to United States vs. Barfield, and then I was making a final  
15 statement of the tentative determination to overrule Objection  
16 3 and 7.

17 MR. ELZA: The final statement is what I missed.

18 THE COURT: Okay.

19 MR. ELZA: Okay. I apologize.

20 THE COURT: So do you have -- I can repeat that the  
21 Court was relying on United States vs. Barfield. There, the  
22 Court states that a defendant does not -- where a defendant  
23 does not introduce evidence to rebut his post-arrest admission  
24 of relevant conduct, the district court may consider it at  
25 sentencing. Counsel can find that case at 941 F.3d 757,

1 pinpoint 764.

2 The Court stated and does continue to find that  
3 defendant has not presented evidence to the contrary, certainly  
4 not evidence sufficient to rebut the testimony and evidence  
5 bearing sufficient indicia of reliability. And for all those  
6 reasons the Court has tentatively determined that it should  
7 overrule Objections 3 and 7 to PSR paragraphs 17 and 26, and  
8 this entire category addresses the controlled substances that  
9 are properly attributable to defendant as calculated in those  
10 paragraphs.

11 Ms. Bell, you may proceed with any information or  
12 argument that is not cumulative of the written submissions to  
13 the Court.

14 MS. BELL: Nothing outside the written submissions,  
15 Your Honor.

16 THE COURT: Anything from defendant?

17 MR. ELZA: And just confirming you're asking solely  
18 related to Objections 3 and 7?

19 THE COURT: Yes.

20 MR. ELZA: Okay. Again, not to be cumulative because  
21 we will rely on our written objections, I would again harken  
22 back to my argument a little bit ago, which is we can see and  
23 respect the Court's view that these were admissions from him,  
24 but in context they're not true and he maintains that they're  
25 not true.



1 I'd also like to incorporate the written allocution  
2 that we -- that I received today that we provided to the Court  
3 right before we started. I don't know if the Court's had time  
4 to read that, but Mr. Barrow in his own words talks about what  
5 was going on in that hearing and I would just incorporate his  
6 words.

7 THE COURT: Okay. So here, the Court did receive and  
8 did mark as defendant's Exhibit A a written allocution. It is  
9 in handwritten form. It spans five pages and it bears  
10 defendant's signature. The Court did review Exhibit A prior to  
11 the sentencing hearing. It was my understanding that this  
12 would be used as an allocution, but you've made reference now  
13 to this Exhibit A twice. But because this one -- this one  
14 reference is more particular to exact sentences specific to  
15 exaggerated or inflated drug quantities, I'll ask that you call  
16 out the specific lines in Exhibit A that you're referencing.

17 MR. ELZA: And first of all, I guess I apologize to  
18 the Court for the lateness of it. I got it -- we met last  
19 night for a good bit of time. He wanted to rewrite it, and so  
20 when I got it today, I tried to get it to the Court as quickly  
21 as possible and fair that it was --

22 THE COURT: And again, yes, I understand -- I find  
23 that defense counsel had good cause for the delay. This Court  
24 has photocopied defendant's Exhibit A. It was denominated as  
25 an allocution, but it can certainly be marshalled in support of

1 any argument you want to make. The Court has also provided  
2 copies to the Government and court staff, so you can make  
3 reference to any section. I just want to make certain I  
4 understand your supplemental argument to Objections 3 and 7,  
5 and if you'll call out by page number and section what  
6 information in Exhibit A should be used to supplement your  
7 objection 3 and 7.

8 MR. ELZA: The -- Mr. Barrow would point the Court to  
9 page 1 which gives the context about how that meeting came into  
10 play. Moving into page 3 --

11 THE COURT: Well, specific -- let's just go --

12 MR. ELZA: Yeah, I'm sorry.

13 THE COURT: -- page by page. On page 1, I see a  
14 reference to a proffer, proffer agreements, defendant's  
15 insistence on absolute immunity and some of the negotiations  
16 between defendant and investigators and prosecutors, but  
17 what -- what particular sentence is relevant to Objection  
18 Number 3 and 7?

19 MR. ELZA: Okay. So I guess what I'd say is that's  
20 the intro to the proffer I'm talking about.

21 THE COURT: Okay. So you're just using page 1 to  
22 sort of frame what you argue are exaggerated and inflated  
23 statements later?

24 MR. ELZA: Yes.

25 THE COURT: Okay. So let's move to the next relevant

1 page.

2 (Pause in proceedings.)

3 MR. ELZA: Okay. One second, Your Honor.

4 Mr. Barrow's pointing out to me and then I will relay to the  
5 Court just as quickly as I get it.

6 (Pause in proceedings.)

7 MR. ELZA: Okay. Whenever the Court's ready.

8 THE COURT: Please proceed.

9 MR. ELZA: On page 1, starting probably about 80  
10 percent down the page towards the right side, it's a sentence  
11 that begins with "I requested."

12 THE COURT: I'm at the same point.

13 MR. ELZA: I requested -- and -- "I requested that I  
14 have absolute immunity because I was not present for the  
15 proffers of Victor or Vincent Chavez, and the information I was  
16 told to relay was falsely made to implicate me so that it would  
17 look like I was capable of being the missing link that could  
18 secure the arrest of the individuals the government was  
19 interested in."

20 THE COURT: Okay. Understood. Next page, please.

21 MR. ELZA: I've been directed to page 3, very close  
22 to the same place on the page, probably not quite 80 percent  
23 down, sentence begin with "I." "I was told what to say in  
24 hopes of securing cooperation agreement for them." I believe  
25 Mr. Barrow would say referring back to Vincent and Victor.

1 And -- and "It's for that reason I am here trying to protect  
2 myself and my family has put me in this predicament because I  
3 trusted the government would act in good faith towards me like  
4 they suggested they would but didn't obviously."

5 Okay. I think those would be the citations that the  
6 Court was requesting.

7 THE COURT: Okay. So I will add those supplemental  
8 arguments rooted in defendant's Exhibit A at the sentencing  
9 hearing and just invite brief response from the Government.

10 MS. BELL: Thank you, Your Honor.

11 Your Honor, based on the testimony at trial, Agent  
12 Brown and Agent Koval testified that Mr. Barrow was read his  
13 Miranda warnings before he made the December 2021 statement,  
14 that he was not offered any promises. He was not there for a  
15 proffer nor granted immunity or promised immunity. He now  
16 makes self-serving statements, Your Honor, that put forth his  
17 narrative, Your Honor, but I would point the Court to Document  
18 163, page 9. Again back to the Barfield case, the Court  
19 stated, quote, that "It is proper for the district court to  
20 rely on a presentence report's construction of evidence to  
21 resolve a factual dispute rather than relying on the  
22 defendant's version of the facts." That can be found at  
23 Barfield at pincite 766.

24 Your Honor, the defendant's statements that he makes  
25 now contradict certainly what he told law enforcement in

1 December of 2021. He never told the officers that he was  
2 making these statements that were lies. Your Honor, there was  
3 evidence in his phone to back up his statements that he was  
4 engaged in large-scale trafficking of narcotics, Your Honor.

5 And so based on all of that, we would ask the Court  
6 to overrule the defendant's objection.

7 THE COURT: The Court hereby adopts its tentative  
8 determination as its final finding as supplemented by the  
9 argument of the AUSA at the sentencing hearing, and the Court  
10 incorporates those reasons alongside the Government's response  
11 in the addendum, and for those reasons overrules defendant's  
12 Objections Number 3 and Number 7 to PSR paragraphs 17 and 26.

13 Next, the Court will address the leadership role  
14 adjustment. This is defendant's Objection Number 5 to PSR  
15 paragraphs 19 and 29 which apply the leadership role adjustment  
16 specific to the drug trafficking organization.

17 The Court has tentatively determined as follows.

18 In accord with the factors listed at Application Note  
19 2 of Section 3B1.1 of the guidelines and the following  
20 fact-based determination, the Court has tentatively determined  
21 it should overrule the objection in part and sustain in part.

22 First, Section 3B1.1(c) states, quote, "If the  
23 defendant was an organizer, leader, manager or supervisor in  
24 any criminal activity other than described in Part A or Part B,  
25 increase by two levels." Application Note 2 further explains

1 that, quote, "To qualify for an adjustment under this section,  
2 the defendant must have been the organizer, leader, manager or  
3 supervisor of one or more other participants."

4 Applied here, information bearing sufficient indicia  
5 of reliability contained in the PSR, testimony presented at  
6 trial and exhibits presented by the Government at sentencing  
7 all support this Court's finding that the defendant's role in  
8 the DTO rose to at least the level of manager or supervisor  
9 sufficient to qualify for the two-level increase set forth at  
10 Section 3B1.1(c).

11 Evidence shows that defendant used Vincent Chavez,  
12 Jr.'s home as a, quote, "stash house" for his drug trafficking  
13 organization and allowed Chavez, Jr. to sell drugs on his  
14 behalf. This is also reflected in Document Number 163 at page  
15 11, Exhibit A.

16 Chavez was also required to obtain permission from  
17 defendant before selling narcotics, demonstrating defendant had  
18 at least a managerial role over him. Text messages recovered  
19 from defendant's phone likewise show that he recruited drivers  
20 to traffic controlled substances from Mexico as part of the  
21 DTO. He instructed workers in the DTO on how to operate and  
22 generally exercise a managerial role over individuals working  
23 within the DTO. This is also reflected in Document Number 163  
24 at pages 11 through 16.

25 For these reasons, the Court has tentatively

1 determined it should overrule defendant's objections to the  
2 application of the two-level increase pursuant to section  
3 3B1.1(c). However, defendant also objects to PSR paragraph 19  
4 which states that defendant exercised this leadership role for  
5 no less than one year, that year being 2021. As argued by  
6 defendant, he could not have exercised a leadership role for  
7 the entirety of 2021 because he spent a significant portion of  
8 that year incarcerated. This is argued in Document Number 169  
9 at page 3.

10 Applied here, PSR paragraph 49 supports this  
11 assertion by showing defendant was arrested for the instant  
12 offense on February 18, 2021. On balance, the Court finds that  
13 the evidence of defendant's incarceration for the instant  
14 offense constitutes sufficient permissible rebuttal evidence  
15 necessary to overcome the PSR's overall indicia of reliability  
16 in asserting that defendant maintained a leadership role in the  
17 DTO for the entirety of the year 2021.

18 without evidence defendant continued his criminal  
19 enterprise while incarcerated, which is a possibility, this  
20 Court finds that the PSR should be amended to remove this  
21 reference and has tentatively decided to sustain defendant's  
22 objection to this reference in the PSR. However, this  
23 clarification to the PSR does not affect the Court's tentative  
24 ruling that defendant qualifies for a two-level increase in the  
25 total offense level under Section 3B1.1(c).

1 In summary, the Court overrules defendant's Objection  
2 Number 5 to PSR paragraphs 19 and 29 vis-a-vis the two-level  
3 increase pursuant to Section 3B1.1(c), but sustains defendant's  
4 objection to the PSR paragraph 19 reference to the duration of  
5 that leadership role during defendant's period of  
6 incarceration.

7 And at this time, I'll invite any argument or  
8 additional information that is not cumulative of the written  
9 work product.

10 Ms. Bell, you may proceed.

11 MS. BELL: Nothing outside the written documents,  
12 Your Honor.

13 THE COURT: And, Mr. Elza, you may proceed with any  
14 argument that is not cumulative.

15 MR. ELZA: And in an attempt to economy, we would  
16 incorporate my recitation or my supplementation and argument to  
17 Objection Number 4 to paragraph 18 that was taken up in the  
18 last set since those tie in factually.

19 THE COURT: And that prior objection now ruled on is  
20 Objection Number 10 to PSR paragraph 41, the failure to report?

21 MR. ELZA: I'm sorry, I may have misspoken. I -- to  
22 paragraph 4.

23 THE COURT: Oh, you're not referencing a prior  
24 objection already adjudicated but another document.

25 MR. ELZA: Or no. Okay. I'm going to start over



1 because I think I took us down the wrong path.

2 THE COURT: Okay. Strike all of that. When lawyers  
3 start talking numbers it can get confusing. We all went to law  
4 school to avoid math.

5 MR. ELZA: So my understanding is that we are  
6 addressing Objection 5 to paragraphs 19 and 29.

7 THE COURT: Correct.

8 MR. ELZA: And in my written objection on behalf of  
9 Mr. Barrow, I incorporated the written arguments from Objection  
10 4 to paragraph 18 above.

11 THE COURT: Okay.

12 MR. ELZA: And so what I was trying to do in a simple  
13 manner that I've complicated is to also incorporate my argument  
14 to the Court today on the previously-adjudicated Objection 4 to  
15 paragraph 18 here, and probably would have been quicker if I  
16 would have just rehashed it and I apologize.

17 THE COURT: Understood. And so this would be  
18 specific to Objection 4 which pertained to the use of the  
19 terminology "enlist" or counsel's understanding of that term as  
20 used in PSR paragraph 18. This Court has already overruled  
21 Objection Number 4 and thereby intends to give full effect to  
22 PSR paragraph 18.

23 what else would you squeeze from that argument into  
24 this Objection Number 5?

25 MR. ELZA: My focus from 4 would have been from my

1 argument today, as well as the written objection to Number 4 on  
2 where Vincent is in the -- in the drug trafficking  
3 organization --

4 THE COURT: Okay.

5 MR. ELZA: -- which is again -- I mean, he was a  
6 bigwig long before Mr. Barrow was around, and, in fact, in  
7 discovery talks about Victor's the one that introduced Vincent  
8 to Barrow. So again, just for added context and clarification,  
9 we would add that to our argument -- or to our objection.

10 THE COURT: Understood.

11 And I'll invite a brief response from the Government.

12 MS. BELL: Just for the record, there is no evidence  
13 whatsoever that Vincent Chavez, Jr. was a bigwig or a higher-up  
14 in the drug trafficking organization. In fact, all the  
15 evidence is to the contrary, Your Honor. Thank you.

16 THE COURT: Okay. Thank you, counselor.

17 The Court does agree with the AUSA's response to  
18 defense counsel's supplemental argument.

19 (Pause in proceedings.)

20 THE COURT: And in direct response to defendant's  
21 supplemental argument at the sentencing hearing which  
22 incorporated by reference his Objection Number 4 now overruled,  
23 I would add Guideline Section 3B1.1(c), Application Note 4  
24 commentary that explains "In distinguishing a leadership and  
25 organizational role from one of mere management or supervision,

1 titles such as 'kingpin' or 'boss' are not controlling.  
2 Factors the Court should consider include the exercise of  
3 decision-making authority, the nature and participation in the  
4 commission of the offense, the recruitment of accomplices, the  
5 claimed right to a larger share of the fruits of the crime,"  
6 et cetera, et cetera.

7 This Court is not finding that defendant is an  
8 organizer or leader under Section 3B1.1(a) and that defendant  
9 can point to others within the DTO who might arguably qualify  
10 for the 3B1.1(a) enhancement. It is of no effect at this  
11 sentencing when the Court is applying the 3B1.1(c) enhancement.

12 And for the reasons previously stated, the case law,  
13 the analysis and also the Government's response and the  
14 probation officer's addendum, this Court does overrule  
15 defendant's Objection Number 5 and will apply PSR paragraph 19  
16 and 29 as written.

17 Next, regarding the Saldana affidavit, here,  
18 defendant's Objection Number 6 pertains to PSR paragraphs 20,  
19 23 and 30, which describe and apply a sentencing enhancement  
20 relevant to codefendant's affidavit. The Court has tentatively  
21 determined that it should sustain defendant's objection. In  
22 light of Guideline Section 3C1.1, applicable guidelines  
23 commentary and relevant case law, the Court finds that  
24 defendant has made his case, and this Court will sustain  
25 defendant's objection.

1           Section 3C1.1 states that defendant's offense level  
2           should be increased by two levels where defendant willfully  
3           obstructed or impeded or attempted the same, the administration  
4           of justice with respect to the investigation, prosecution or  
5           sentencing of the instant offense of conviction; and, two, the  
6           obstruction related to the defendant's offense of conviction  
7           and any relevant conduct or a closely-related offense.

8           Here, the PSR states defendant qualifies for this  
9           enhancement because he sent text messages to USPO Bailey,  
10          B-A-I-L-E-Y, stating he did not possess the controlled  
11          substances in the instant offense and because he unlawfully  
12          influenced his codefendant in the instant offense to provide  
13          materially-false information. This is reflected in PSR  
14          paragraphs 20 and 23.

15          First, the Court will address the text message to  
16          USPO Bailey. In those messages, defendant describes the Rhome  
17          traffic stop seizure of controlled substances and asserts both  
18          that he was unaware of the methamphetamine in the vehicle and  
19          that his codefendant would be submitting an affidavit taking  
20          responsibility for same. That is reflected in PSR paragraph 11  
21          and 12.

22          But Application Note 2 of Section 3C1.1 states that,  
23          quote, "This provision is not intended to punish a defendant  
24          for the exercise of a constitutional right, including a denial  
25          of guilt other than a denial under oath that constitutes

1 perjury." Instead, refusal to admit guilt to a probation  
2 officer expressly does not constitute willful obstruction of  
3 justice. Defendant's assertion he was unaware of the presence  
4 of methamphetamine in his car comports with his assertion of  
5 innocence and insistence of holding the Government to its  
6 burden of proof at trial.

7 Additionally, the Court finds that defendant's text  
8 message to USPO Bailey did not rise to the level of seriousness  
9 contemplated by the examples of covered conduct in Application  
10 Note 4 to the same guideline.

11 Next, the PSR states that defendant qualifies for an  
12 obstruction of justice enhancement for unlawfully influencing  
13 his codefendant to provide materially-false information to the  
14 probation officer. The PSR seems to reach this conclusion  
15 based on defendant's assertion to his PO that his codefendant  
16 would submit such affidavit, his codefendant's assertion of  
17 innocence during the Rhome traffic stop and the codefendant's  
18 subsequent acquittal at trial. The Government supports this  
19 conclusion by identifying defendant's December 16, 2021  
20 interview with DEA where he stated his codefendant was not  
21 involved in the instant offense. This is reflected in Document  
22 Number 163 at pages 14 and 15.

23 From this, the Government contends that, quote, "The  
24 only logical explanation for Saldana falsely confessing to the  
25 methamphetamine is that someone induced her to do so, and the

1 only person who had a motive for Saldana to take the fall is  
2 Barrow." The Court is quoting from Document Number 163 at page  
3 14.

4 On balance the Court disagrees. Instead, there are  
5 many reasons why defendant's codefendant, whom he was in a  
6 romantic relationship with at the time, may have written the  
7 affidavit at issue. The Government and PSR's assertion that  
8 defendant's influence over his codefendant caused her to write  
9 the affidavit is one interpretation but not the only. The  
10 conclusion that defendant's influence was unlawful requires a  
11 further inference that is unsupported by the evidence sub  
12 judice.

13 Here, the Court does not find by a preponderance of  
14 the evidence that the affidavit resulted from defendant's  
15 unlawful influence over his codefendant, and the Court further  
16 finds that the conclusions reached in the PSR as to unlawful  
17 influence are not supported by an adequate evidentiary basis,  
18 even if a logical inference in one theory of the case presented  
19 by the Government. Here, the Court is guided by United States  
20 vs. Cabrera, 288 F.3d 163.

21 For all these reasons and reasons stated in  
22 defendant's Objection Number 6, the Court has tentatively  
23 determined that it should sustain defendant's objection to PSR  
24 paragraphs 20, 23 and 30.

25 I'll now invite any argument that would not be

1 cumulative of the written submissions.

2 Ms. Bell, you may proceed.

3 MS. BELL: Nothing outside the written submissions,  
4 Your Honor.

5 THE COURT: And anything further, Mr. Elza?

6 MR. ELZA: Not on this objection, Your Honor.

7 THE COURT: Okay. So that your notes can be complete  
8 here, the Court is sustaining defendant's Objection Number 6 to  
9 PSR paragraphs 20, 23 and 30, and the Court will order the  
10 probation officer to reflect same.

11 Next, regarding methamphetamine actual, defendant's  
12 Objection Number 8 to PSR paragraph 26 objects to the use of  
13 methamphetamine actual when calculating drug quantities  
14 attributable to defendant. In light of binding Fifth Circuit  
15 case law, the Court has tentatively decided to overrule  
16 defendant's objection. As conceded by defendant, his argument  
17 is foreclosed by Fifth Circuit precedent. Defense counsel  
18 admits this in Document Number 162 at 3. The Court agrees with  
19 defense counsel's assessment that the issue is foreclosed and  
20 is guided by United States vs. Molina, 469 F.3d 408, a Fifth  
21 Circuit case from 2006.

22 And because of this binding Fifth Circuit precedent,  
23 the Court has tentatively determined it should overrule  
24 defendant's Objection Number 8 to PSR paragraph 26, though the  
25 Court finds that defense counsel capably and effectively

1 preserved the issue for further appellate review should that  
2 precedent suffer reversal.

3 I'll now invite any additional argument or  
4 information that would not be cumulative, beginning with  
5 Ms. Bell.

6 MS. BELL: Nothing further, Your Honor.

7 THE COURT: Anything further, Mr. Elza?

8 MR. ELZA: No, Your Honor.

9 THE COURT: Okay.

10 MR. ELZA: Before we shift to the next one, can I  
11 make sure I'm not off on our objections?

12 THE COURT: You may.

13 MR. ELZA: 7 -- Objection 7 which was paragraph 26,  
14 we've addressed it in other contexts I think, but did that need  
15 to be addressed with this group?

16 THE COURT: I paired Objection Number 7 with  
17 Objection Number 3. Both --

18 MR. ELZA: Oh, I'm sorry. I just saw my notes.

19 THE COURT: Okay.

20 MR. ELZA: I apologize.

21 THE COURT: Again, lawyers with numbers.

22 MR. ELZA: Yeah.

23 THE COURT: This is why we hire forensic accountants  
24 to do this stuff. Unfortunately, this is a sentencing context  
25 and we can't delegate this to a CPA.



1           So yes, Objections Number 3 and Number 7 were grouped  
2 by the Court and adjudicated as a set, and they correspond to  
3 paragraphs -- PSR paragraphs 17 and 26.

4           Is there any additional clarification that you  
5 require?

6           MR. ELZA: No. No. As soon as I started talking, I  
7 looked down and saw my note.

8           THE COURT: Okay.

9           MR. ELZA: I've got two sets of notes going and  
10 that's part of the problem.

11           THE COURT: Okay. Well, thank you for working with  
12 the Court to make sure the record is clear, but yes, I think  
13 that one has been asked and answered and the Court has ruled.

14           And I think we're to our final objection affecting  
15 guideline -- or potentially affecting guidelines calculation,  
16 defendant's Objection Number 9 to PSR paragraph 34 which  
17 calculates defendant's base offense level.

18           In light of the Court's previous ruling -- rulings,  
19 the Court has tentatively decided to sustain in part  
20 defendant's Objection Number 9 to the PSR's calculation of his  
21 base offense level. This specifically relates to the Court  
22 sustaining defendant's Objection Number 6. That will result in  
23 a different base offense level calculation. Applying forward,  
24 all of the Court's rulings overruling and sustaining  
25 defendant's objection, the base offense level in the PSR should

1 be adjusted from 44 to 42. And in that limited way, the Court  
2 sustains in part defendant's Objection Number 9 to give effect  
3 to this Court's aforementioned rulings on all of defendant's  
4 objections.

5 Finding that defense counsel has capably and  
6 effectively preserved for further appellate review all of the  
7 objections that were timely submitted, written and argued to  
8 the Court and that the net result is a change in the base  
9 offense level from 44 to 42, do I hear any objection to this  
10 ruling on defendant's Objection Number 9, Ms. Bell?

11 MS. BELL: Your Honor, other than the Government's  
12 position already stated with regard to Objection Number 6 and  
13 9, Your Honor, no further comments, Your Honor.

14 THE COURT: Okay. Any further objection or argument  
15 on this last Objection Number 9?

16 MR. ELZA: At risk of overgeneralization and perhaps  
17 duplication, I just would like to make clear that, you know,  
18 that objection to me really incorporates all of our objections,  
19 all the Government's responses and all of the Court's rulings  
20 because all of that is what we used to head towards a  
21 sentencing offense level.

22 So with that understanding --

23 THE COURT: And that's why I said I find that you've  
24 preserved for further appellate review any objections timely  
25 submitted, written and argued. I understand that point is made

1 here --

2 MR. ELZA: Okay.

3 THE COURT: -- a second time, but yes, I find that  
4 those arguments are preserved for further appellate review.  
5 That would arguably affect the final level, but the net effect  
6 of all those rulings, some overrulings, some sustaining  
7 objections, is that that final level should be adjusted from 44  
8 to 42.

9 MR. ELZA: Based on --

10 THE COURT: Any objection to those calculations based  
11 on the Court's rulings?

12 MR. ELZA: No. Based on the Court's rulings, that's  
13 the proper calculation.

14 THE COURT: Okay. And just for clarification,  
15 Ms. Bell, I understand that the Government may disagree with  
16 some of those rulings, but now that those are in place, any  
17 objection to the calculations that result?

18 MS. BELL: No, Your Honor, just preserving the  
19 Government's argument with regard to Objection Number 6.

20 THE COURT: Understood.

21 I find that the Government has capably and  
22 effectively preserved for further appellate review this Court's  
23 ruling on defendant's Objection Number 6.

24 Now, dare I invite any untimely arguments, given the  
25 extensive paperwork that we've put into this sentencing process

1 thus far. I'm loathe to do so, but I do want to provide  
2 counsel for the Government and counsel for the defendant one  
3 last opportunity to urge any untimely objections or requested  
4 clarifications to the PSR or addendum.

5 Ms. Bell.

6 MS. BELL: Your Honor, based on the Court's ruling  
7 with regard to Objection Number 6, I think there needs to be an  
8 adjustment to PSR paragraph 32 under 4B1.1(a) and perhaps PSR  
9 paragraph 34, Your Honor, just based on the Court's ruling. Is  
10 that correct?

11 THE COURT: Okay. So PSR paragraph 32 --

12 MS. BELL: The career offender enhancement, Your  
13 Honor, and then the total offense level in paragraph 34 states  
14 that when the total offense level is in excess of 43, the  
15 offense level will be treated as level 43. Would that change  
16 Your Honor, or does 32 remain at 44?

17 (Pause in proceedings.)

18 MR. ELZA: Can -- Your Honor?

19 THE COURT: Any response from the defendant?

20 MR. ELZA: Well, I was going to ask if you were  
21 waiting on someone, if I could have some private time --

22 THE COURT: Yes. I'm conferring with the USPO to  
23 make certain that there's no cascade effect to the Court's  
24 ruling on levels. While we do that, I'll order the microphones  
25 disabled so you can have an attorney-client privileged

1 communication with the defendant.

2 (Off the record at 3:01 p.m.)

3 (On the record at 3:08 p.m.)

4 THE COURT: Okay. Regarding final argument of the  
5 Government that the net result of the Court's sustaining  
6 defendant's Objection Number 6, the Court sustains the  
7 Government's objection and instructs the probation officer to  
8 modify the PSR accordingly.

9 The adjusted offense level in PSR paragraph 31 should  
10 now read 42, not 44. The same adjustment should apply to PSR  
11 paragraph 32, but the Court finds that it does not have any net  
12 effect on the advisory guidelines range by operation of  
13 Guidelines Section 4B1.1(a) and (b). And defendant is --  
14 because defendant is already in Criminal History Category VI.  
15 So although PSR paragraph 32 is ordered adjusted from 44 to 42,  
16 it has no net effect on the guidelines calculations because  
17 defendant's criminal history is level VI and the charts that  
18 would otherwise apply don't affect any sliding scale for this  
19 defendant.

20 Finally, PSR paragraph 34 should be revised to  
21 reflect a total offense level of 42, changing the current  
22 number 43 to the revised number 42.

23 (Pause in proceedings.)

24 THE COURT: So just to be pellucidly clear, when the  
25 Court said it doesn't affect -- any of these adjustments affect

1 the advisory guidelines range, I misstated. I'm referring to  
2 the net effect of the career offender enhancement. Because of  
3 the operative criminal history in this case, there is no  
4 sliding scale effect when the number -- when the offense level  
5 moves from 44 to 42, but it will affect the final advisory  
6 guidelines range when that offense level of 42 is combined with  
7 the Criminal History Category VI. And those adjustments will  
8 be reflected in the Court's final calculation and pronouncement  
9 of the advisory guidelines range.

10 Anything further, Ms. Bell?

11 MS. BELL: Only that I think paragraph 34 would be  
12 stricken, Your Honor, just because it's irrelevant. If the  
13 base offense level isn't over 43, then the paragraph is  
14 unnecessary, Your Honor. And so I would just suggest to the  
15 Court that we would strike that paragraph. It doesn't need to  
16 be 42. It's simply an unnecessary paragraph based on the  
17 Court's prior rulings.

18 THE COURT: Any objection, Mr. Elza?

19 MR. ELZA: No, not as to the text that follows total  
20 offense level, but I think at some point we have to have --

21 MS. BELL: Oh, I'm sorry.

22 MR. ELZA: -- a total offense level. But I think the  
23 text goes away.

24 THE COURT: Yeah.

25 MS. BELL: Right, the text goes away.

1 THE COURT: That's right.

2 MS. BELL: It's just the total offense level. I  
3 apologize.

4 THE COURT: That's simply result of the sentencing  
5 table that appears at the back of the manual. The offense  
6 level only goes to 43. That's why there's a Chapter 5, Part A  
7 comment. The total offense level should still read 42, but  
8 there should be no reference to the now unnecessary Chapter 5,  
9 Part A, Comment Note 2 referencing what this Court should do  
10 when calculations produce an offense level in excess of 43.

11 MS. BELL: Thank you, Your Honor. Nothing further.

12 THE COURT: Okay. So...

13 (Pause in proceedings.)

14 THE COURT: All right. So I know we've gone through  
15 several objections, some overruled, some sustained, but now I  
16 think the Government, defense counsel and this Court are on the  
17 same page. PSR paragraph 31 should be modified to reflect an  
18 adjusted offense level of 42. Similarly, PSR paragraph 32  
19 should be adjusted to reflect the same number, 42. And then  
20 PSR paragraph 34 should be revised to include the same number,  
21 42, minus the now unnecessary Chapter 5, Part A, Comment Note 2  
22 commentary, which would only apply when the Court calculates a  
23 total offense level in excess of 43, which is no longer the  
24 case.

25 Ms. Bell, does the Government agree that the Court

1 has arrived at the right result revising PSR paragraphs 31, 32  
2 and 34?

3 MS. BELL: Those are the correct revisions, Your  
4 Honor. Thank you.

5 THE COURT: And does defense counsel agree that now  
6 that the Court has sustained certain defense objections, that  
7 PSR paragraphs 31, 32 and 34 are properly revised?

8 MR. ELZA: Yes, we agree.

9 THE COURT: Okay. As both defense counsel and the  
10 Government understand, this Court must properly calculate an  
11 advisory guidelines range as a starting point before we  
12 proceed. So I want to make certain that we all arrive at that.

13 Combined, the Court hereby adopts its tentative  
14 determinations as its final finding with exception to -- as  
15 explained for all of these objections affecting guidelines  
16 calculations, and the Court thereby adopts the findings and  
17 conclusions set forth in PSR paragraphs 17, 26 and 29 alongside  
18 the relevant addendum paragraphs. The Court's ordered  
19 paragraphs 19, 20, 23, 30, 34, 31, 32 and 34 amended to reflect  
20 this Court's rulings. And to be clear, this Court will not  
21 consider the two-level enhancement for obstruction of justice  
22 when calculating the final advisory guidelines range.

23 The Court is now moving to those calculations.

24 The Court -- having ruled on defendant's objections,  
25 the Court hereby adopts the remaining findings and conclusions



1 of the PSR and the addendum in their entirety except as  
2 modified by the Court, specifically except as modified to  
3 account for the Court sustaining defendant's Objection Number  
4 6.

5 Here, the Court is applying applicable federal  
6 statutes and the 2023 Guidelines Manual. The Court has  
7 independently compared the 2023 Guidelines Manual to the  
8 guidelines that were in effect on the date of the instant  
9 offense of conviction and thereby determined that application  
10 of the 2023 Guidelines Manual will not violate the ex post  
11 facto clause of the Constitution or any other right of  
12 defendant.

13 Mr. Elza, does the defendant agree that this Court  
14 may apply that new 2023 Guidelines Manual?

15 MR. ELZA: The defendant so agrees.

16 THE COURT: Does the Government agree?

17 MS. BELL: Yes, Your Honor.

18 THE COURT: Before calculating and announcing the  
19 advisory guidelines range, the Court will note the impact of  
20 statutory maximums as outlined in the PSR. Here, the  
21 statutorily-authorized maximum sentence is life imprisonment  
22 and the statutory maximum fine is \$10 million.

23 Having considered the probation officer's  
24 calculations and conclusions and the PSR and addendum and  
25 having ruled on objections thereto, specifically defendant's

1 objections thereto, the Court determines that the final correct  
2 advisory calculations are as follows: total offense level 42,  
3 Criminal History Category VI, imprisonment range of 360 months  
4 to life imprisonment, a supervised release range of five years  
5 to each count, a fine range of 50,000 up to \$10 million, and  
6 restitution in the form of community restitution.

7 And does defense counsel have any objections to the  
8 Court's calculation of the advisory guidelines range?

9 MR. ELZA: No, that appears to be the proper  
10 guideline range based on the rulings today.

11 THE COURT: Okay. Any objection to the calculations,  
12 Ms. Bell?

13 MS. BELL: No, Your Honor.

14 THE COURT: The Court will apply that advisory  
15 guidelines range.

16 As discussed at the outset of this hearing, the Court  
17 has tentatively determined that nonguide -- a nonguidelines  
18 downward variance is insufficient. I'll now set forth factor  
19 by factor this Court's reasons for denying or tentatively  
20 determining it should deny defendant's motion for downward  
21 variance.

22 Pursuant to Section 3553(a)(1), the history and  
23 characteristics of this defendant includes a lengthy criminal  
24 history of violent and drug-related offenses. Defendant's  
25 criminal history began as early as 18 years of age when he was

1 convicted of aggravated robbery. This is reflected in PSR  
2 paragraph 38. There, defendant approached, assaulted and  
3 robbed an individual alongside four accomplices. Defendant  
4 then instructed the victim to return to his home and retrieve  
5 money that he possessed there. Defendant then showed the  
6 victim what he indicated to be a handgun and told defendant if  
7 he alerted authorities to the commission of this crime  
8 defendant would harm him and the victim's wife. That is  
9 reflected in PSR paragraph 38.

10 Defendant has another conviction for evading arrest  
11 and disorderly conduct, neither of which received criminal  
12 history points but were detailed in PSR paragraphs 39 and 40.  
13 And defendant's conviction for disorderly conduct, a law  
14 enforcement officer observed defendant participate in a mob  
15 that pulled a man from his vehicle and began beating him.  
16 While the victim was on the ground and unresponsive, the mob  
17 continued assaulting the victim by kicking him. Again, this  
18 violent behavior received no criminal history points.

19 Defendant also has convictions for trafficking  
20 controlled substances similar to the commission of the instant  
21 federal offense of conviction. In one of those cases,  
22 defendant pleaded guilty to conspiracy to distribute and  
23 possess with intent to distribute 50 grams or more of cocaine  
24 base. This is reflected in PSR paragraph 41. In this case,  
25 defendant established a network of individuals in Midland,

1 Texas whom he employed to distribute crack cocaine as part of  
2 an organized DTO. Defendant's criminal history also reflects  
3 that he trafficked narcotics in a vehicle alongside \$51,120 in  
4 U.S. currency, a loaded nine-millimeter Taurus handgun and a  
5 loaded .40 caliber Smith & Wesson handgun. This is reflected  
6 in PSR paragraph 42.

7 The Court notes that the Fifth Circuit has identified  
8 this combination of drugs and firearms as tools of the trade.  
9 The Court refers counsel to United States vs. Zapata-Lara,  
10 615 F.3d 388, for that terminology.

11 Additionally, defendant fled from law enforcement  
12 during the commission of that offense, as reflected in PSR  
13 paragraph 42. The length of defendant's criminal history  
14 spanning the entirety of his adult life, the violent nature of  
15 many of these offenses along with his repeated participation in  
16 drug trafficking all constitute facts and factors that this  
17 Court finds are aggravating in the extreme and weigh heavily  
18 against granting defendant's motion for downward variance.

19 Next, pursuant to Section 3553(a)(2)(A) which  
20 requires the Court to consider the nature and circumstances of  
21 the offense, to reflect the seriousness of and to provide just  
22 punishment for the offense, here, defendant trafficked 3,836  
23 grams of methamphetamine actual, 853.4 grams of cocaine, 108.7  
24 grams of fentanyl, 2,885 grams of methamphetamine actual and at  
25 least 200 kilograms of methamphetamine mixture. This is all

1 reflected in PSR paragraph 17.

2 Because defendant possessed fentanyl during the  
3 instant offense, the Court will note that the potency of  
4 fentanyl presents an enormous danger. A January 2021 report  
5 released by the United States Sentencing Commission on fentanyl  
6 and fentanyl analog states, quote, "Fentanyl is approximately  
7 30 times more potent than heroin and approximately 60 times  
8 more potent than morphine, which results in an increased  
9 potential for fatality, particularly when the user is unaware  
10 they are using fentanyl."

11 Additionally, during defendant's arrest during the  
12 Rhome traffic stop, defendant possessed \$17,007 in U.S.  
13 currency alongside 3,836 grams of methamphetamine actual.  
14 Defendant described in detail his role in the DTO with  
15 knowledge as to how that DTO charged for drugs, how they  
16 delivered drugs and how much they paid drivers. That's  
17 reflected in PSR paragraph 14. This DTO was connected to the  
18 Sinaloa Cartel, and defendant played a managerial role in  
19 trafficking controlled substances on behalf of that cartel.  
20 This is reflected in PSR paragraphs 15, 18 and 19.

21 The Court finds the 3553(a)(2)(A) factors and facts  
22 aggravating in the extreme and weighing heavily against  
23 defendant's motion for downward variance.

24 Next, pursuant to Section 3553(a)(2)(C) which  
25 requires the Court to promote respect for the law, to afford

1 adequate deterrence to criminal conduct and to protect the  
2 public from further crimes of the defendant, here, defendant  
3 has a history of criminality spanning the entirety of his adult  
4 life involving violent offenses and drug-trafficking offenses  
5 similar to the commission of this offense.

6 Despite many terms of incarceration, defendant has  
7 refused to refrain from illegal conduct. This is reflected in  
8 PSR paragraphs 38 through 42. Furthermore, defendant's  
9 criminal conduct shows a blatant disregard for law enforcement  
10 and the rule of law, as evidenced by his repeated criminality  
11 and offenses involving flight from arrest. Again, this is  
12 detailed in PSR paragraphs 38 through 42.

13 The Court finds the 3553(a)(2)(C) factor and related  
14 facts aggravating in the extreme, weighing heavily against  
15 defendant's motion for downward variance.

16 For these reasons, the Court has tentatively  
17 determined that it should deny defendant's motion for downward  
18 variance.

19 I'll invite responsive argument from the Government  
20 as long as it is not cumulative of the written work product.

21 MS. BELL: Nothing at this time, Your Honor.

22 THE COURT: And, Mr. Elza, you may respond. You are  
23 the movant. You may respond with any argument you deem  
24 necessary.

25 MR. ELZA: We would rely on the filings. Nothing

1 that we have at this point would be noncumulative.

2 THE COURT: Okay. Thank you.

3 And, Mr. Elza, that the Court may have overruled  
4 various written objections or arguments made in sentencing  
5 memorandum does not mean the issues were not well briefed.  
6 This case garnered extensive legal research, analysis and  
7 briefing from both parties, and the Court thanks both defense  
8 counsel and the AUSA for excellent briefing. I know it is a  
9 lengthy and complicated case, and the Court benefitted directly  
10 from the capable and effective assistance of defense counsel.

11 For all those reasons and reasons stated in the  
12 Government's response, the Court overrules any objection --  
13 well, I'm sorry, this is the motion for downward variance --  
14 the Court denies defendant's motion for nonguidelines downward  
15 variance based on the aforementioned weighting of the 3553(a)  
16 factors and facts.

17 Now let's turn to statements, final arguments and  
18 allocutions.

19 Ms. Bell, did the Government comply with any and all  
20 statutory obligations to identify and consult victims in this  
21 case?

22 MS. BELL: Yes, Your Honor.

23 THE COURT: And do you intend to present victim  
24 impact statements at sentencing?

25 MS. BELL: No, Your Honor.

1 THE COURT: And, Mr. Elza, the Court did receive and  
2 does -- and has waived all deadlines to defendant's various  
3 certificates of achievement and accomplishment reflecting  
4 coursework that he has completed during his term of detention.

5 Does defense counsel intend to present any character  
6 statements through live testimony?

7 MR. ELZA: One moment, Your Honor.

8 (Counsel and defendant conferred off the record.)

9 THE COURT: Okay. With that, let's turn to final  
10 arguments. And just so counsel have at their disposal any  
11 documents timely before the Court or untimely before the Court,  
12 the Court has admitted as character statements the certificates  
13 of accomplishment. Those are marked as Exhibit B to the  
14 sentencing hearing and those may be referenced as such, and the  
15 Court has admitted Defendant's Exhibit A, which is a written  
16 allocution spanning five pages signed by defendant. I'll just  
17 ask that counsel be consistent in referencing those as  
18 Defendant's Exhibit A and Exhibit B.

19 So I'm going to begin with -- I know you're standing,  
20 Mr. Elza, but I'm going to begin with the Government, inviting  
21 final argument from the AUSA, and then I'll allow defense  
22 counsel to respond. Do you have a preference on allocution and  
23 what order?

24 (Counsel and defendant conferred off the record.)

25 MR. ELZA: Okay. Mr. Barrow has told me that he does



1 have something he wants to address in allocution outside of the  
2 letter.

3 THE COURT: Okay. Do you want that to follow your  
4 argument or precede your argument?

5 (Counsel and defendant conferred off the record.)

6 MR. ELZA: He's stated his preference is to go after  
7 me.

8 THE COURT: Okay. So we'll follow that order of  
9 operation, final argument from the AUSA, final argument from  
10 defense counsel, followed by defendant's allocution if he  
11 exercises his right.

12 MR. ELZA: Your Honor, I think I owe you an answer  
13 from the other -- we do not intend to have live witnesses.

14 THE COURT: Oh --

15 MR. ELZA: I'd asked for a moment, but it was  
16 unrelated. I should have just answered you before I asked for  
17 the moment.

18 THE COURT: Okay. I know there were a packet of  
19 certificates that are marked as Exhibit B. I didn't know if  
20 any of the persons referenced in those certificates intended to  
21 submit character statements. You have responded in the  
22 negative, correct?

23 MR. ELZA: Correct, Your Honor.

24 THE COURT: Okay. So we've moved on from character  
25 statements. Now to arguments and we'll follow the

1      aforementioned order.

2               Ms. Bell, you may proceed.

3               MS. BELL: Your Honor, I would point the Court first  
4      to the history and characteristics of the defendant. First to  
5      PSR paragraph 38, Your Honor, the defendant was released on  
6      parole from that offense in November of 2008. Your Honor  
7      correctly states that this was a violent offense where the  
8      defendant was convicted of aggravated robbery where he forcibly  
9      took money from a victim and made threats to the victim.

10             Your Honor, while he was out on parole for that  
11     offense -- and I'm basing this on paragraph -- PSR paragraph  
12     41 -- the defendant in 2009 became a target of an investigation  
13     in distributing crack cocaine in Midland, Texas, Your Honor.  
14     So it is very close to the time that he was released on parole  
15     that he becomes a suspect. Your Honor, the Government submits  
16     that he, when released, almost immediately engages in drug  
17     trafficking activity again and again, Your Honor, and this is  
18     evidence of that.

19             Your Honor, in that case he was in a role as the  
20     leader/organizer. He was organizing with Paul Gary Allen.  
21     People do travel from Amarillo to Midland to recruit  
22     individuals to distribute crack cocaine as they felt the  
23     Midland market was more profitable and that money was coming  
24     back to Mr. Barrow in Amarillo. He was convicted of that  
25     offense and he was placed in a residential reentry center in

1 Fort Worth. He escaped from that facility.

2           So he's technically in the custody of the Bureau of  
3 Prison at the time that he committed the new state offense,  
4 which was November 22nd, 2017, reflected in PSR paragraph 42,  
5 Your Honor, where he had over 5 kilograms of cocaine and over  
6 \$51,000 when he ran from police and he was convicted of that  
7 offense. He's released from that offense, Your Honor, in  
8 September of 2020 and immediately engages in what leads up to  
9 the instant offense, the traffic stop in February of 2021, Your  
10 Honor.

11           And so again and again we can see that he engages in  
12 criminal activity almost immediately upon release, and then he  
13 engages in very significant criminal activity where he is the  
14 leader/organizer of drug activity, Your Honor, and significant  
15 drug activity, as the Court has discussed, over 200 kilograms  
16 at least. And again, in his statement he said 2- to 300  
17 kilograms at least, Your Honor. So that was a very  
18 conservative estimate.

19           Your Honor, given the nature and circumstances of the  
20 offense, the drug amounts and the dangerousness of all the  
21 drugs involved in this offense, we believe that it is  
22 aggravating and the Court should consider that. And again, to  
23 protect the public from future crimes of the defendant who has  
24 shown over and over again, even when on supervision and  
25 immediately upon his release and throughout his whole adult

1 life, Your Honor, he's continued these significant criminal  
2 offenses and to protect the public from future crimes of this  
3 defendant, this sentence must be significant. The Government  
4 believes that the appropriate sentence is life imprisonment,  
5 Your Honor. We'd ask the Court to impose the same.

6 THE COURT: Thank you, counselor.

7 The Court will give appropriate weight to the  
8 argument of the AUSA.

9 Mr. Elza, you may proceed with any argument you deem  
10 necessary.

11 MR. ELZA: May I approach the podium?

12 THE COURT: You may approach.

13 MR. ELZA: Thank you, Your Honor, for affording us  
14 the opportunity to address the Court today, both up until this  
15 closing argument as well as this closing argument.

16 I'll start in probably an unusual way, and that is to  
17 thank this Court for the opportunity to represent Mr. Barrow.  
18 I have done it proudly and I'm proud of him, and, you know, as  
19 I stand here in front of this Court on repeated occasions, you  
20 know, I always tell this Court -- you know, my job is to tell  
21 the rest of the story, and there is so much more to this story.

22 You know, you can paint him with a consistent history  
23 of criminal conduct, but if you look behind that, you can paint  
24 him with a consistent history of being in debt to Victor  
25 Chavez, Jr. and his affiliates, including Vincent Chavez, Jr.

1 It's not to excuse, but it is to explain. He cannot get out  
2 from the debt -- we heard that talk a lot today. He cannot get  
3 out from that debt that goes back a long ways and deals not  
4 with a drug debt but with the debt of the reduced sentence that  
5 he got for cooperation many times before.

6 And there are roomful of agents behind me that I've  
7 worked with in many capacities throughout my career. There's  
8 the U.S. Attorney's Office and their delegation that I've  
9 worked with throughout the years and they may have a different  
10 spin on why or motive, but when you go through this file, from  
11 the time of those reductions on the prior federal sentence,  
12 this is a person who has worked with law enforcement and who  
13 has given law enforcement many leads that led to successful  
14 prosecutions.

15 I did not intend to go there, but that's kind of  
16 where I feel this -- the hearing today led me to address that.

17 But why I'm here is to talk to you about Mandis. I  
18 can't tell you, I guess I will at some point, how many hours  
19 I've spent with this man, but I mean, it's in the hundreds of  
20 hours, more than any probably civil client or criminal client  
21 I've had in 27 or 28 years, over and over up to last night.  
22 And -- and I'll tell you I'll vouch for him, I like him, and he  
23 is a likable person. He is positive. There are times he gets  
24 frustrated, but he never gets negative.

25 And those certificates that are Exhibit --

1 THE COURT: B.

2 MR. ELZA: -- B only tell part of the story. I hit  
3 it in our sentencing memorandum. Almost since day one here he  
4 has led a Bible study at that jail daily. At times, that Bible  
5 study is big enough that they afford him a larger room than  
6 just the corner of the dayroom where it might otherwise take  
7 place. It is not a fraud. We talk about religion. We talk  
8 about the Bible. He reminds me a lot about the Holy Spirit in  
9 our conversations. And it is genuine. I mean, he gets nothing  
10 by fooling me, right? I mean, these are part of the  
11 relationship we have -- we have developed.

12 I will tell you this. This Court, through voir dire,  
13 knows this. I have many ties to Tulia, Texas. It's the first  
14 place I remember living. The first big case I ever worked on  
15 was the civil case from the Tulia drug bust. I've represented  
16 the school district in federal litigation. I represent the  
17 City now. I've represented the hospital district. I've  
18 represented the co-ops there. I know that town and that  
19 community. I'm there a lot.

20 And during that time, I have talked to a lot of  
21 people about Mandis and his old teachers, his old friends, one  
22 of the lawyers down there. They tell you the things that I'm  
23 telling you, that he is likable and personable and smart and  
24 nice. Everybody has a story about where he is.

25 I -- I recognize the trial, the suppression hearing,

1 the arguments of counsel, of opposing counsel, and those  
2 narratives go through and have a foundation. They do, but they  
3 don't tell the full story. They don't tell who he is and they  
4 don't define who he is. He is a person. He doesn't cuss. He  
5 doesn't gossip. And as you look through this sentencing  
6 memorandum, and I would like to hit just a little bit of it, I  
7 mentioned his religion. It is real. It is not to be -- to be  
8 mocked or discounted because of the circumstances he finds  
9 himself in.

10 There are people out there that work at the jail who  
11 call him the pastor of the dorm. He takes it seriously, and  
12 one thing that was hard to communicate in paper is it is so  
13 important to him to help these men out there, young and old,  
14 but especially the young men out there on how to reestablish  
15 with their families. Because that's the key. If you're out  
16 there there's a good chance you have burned those bridges, but  
17 to him, he wants them to come out, to be able to know how to  
18 interact with a spouse or a fellow parent or their own parents  
19 because without that support they're likely to end up back  
20 there.

21 He's a student. You know, it's hard out there to get  
22 access to the law library and it's restricted for the federal  
23 inmates quite a bit, but every chance he gets he goes there.  
24 Not just for himself and for the others. I think your first  
25 thought, everybody's first thought is oh, no, not one of those

1 jailhouse lawyers. Because, you know, we went -- I think  
2 anybody in this room can tell you about a year ago we had  
3 somebody out there who was getting everybody to go to trial.  
4 You probably saw that. That's not what this man does. He is  
5 out there trying to help people make the best decisions for  
6 themself.

7 And I -- I talk about those, and several of these I  
8 learned anecdotally. A gentleman I stood here representing  
9 with severe mental illness, not talking about competency  
10 issues, I'm talking about mental illness, paranoia, absolutely  
11 making bad decisions, without knowing that I was his lawyer, I  
12 could not figure out what the change was. The change was this  
13 man right here looking out for his fellow human being. He got  
14 nothing out of it, got nothing out of helping that man.

15 THE COURT: Changing of the guard.

16 MR. ELZA: Okay, scared me.

17 The -- I had another client that I stood before this  
18 Court on -- who after his plea just became defiant and against  
19 everything, and again I couldn't figure out quite what happened  
20 but everything got good and it turned out it was Mr. Barrow  
21 sitting down and working through issues with him to help him  
22 understand and to trust. Both of those cases worked out very  
23 favorably for young men that would not have without his  
24 mentorship and leadership.

25 He is a peacekeeper out there at that jail. He has



1 mentored through the Bible study. He has mentored through a  
2 young man who's fighting demons of self-harm and suicide that  
3 he still stays in touch with. And I paint this because they're  
4 real and they're not stories he told me. They're not stories a  
5 family member came and told me. They -- in two years, with as  
6 many clients as I represent out there, these are stories that I  
7 have learned.

8           The other thing that I learned of kind of after I  
9 wrote this sentencing memorandum through a third party, a  
10 client that's out there, is, you know, a lot of these guys when  
11 they get out there, not to be crass, they kind of -- they find  
12 Jesus, they want to do better. I mean, it's a shock to them,  
13 and education's part of that. And not everybody just gets to  
14 go into a GED program. You have to wait. You have to be  
15 accepted. There are a group of these young men that have  
16 reached out, and Mr. Barrow goes through with them to help them  
17 so that when they get into that class they can hit the ground  
18 running and get that GED. Again, there's nothing in it for  
19 him.

20           THE COURT: Yes, the defendant talks about that at  
21 page 4 of his written allocution --

22           MR. ELZA: Okay.

23           THE COURT: -- about helping inmates just launch and  
24 pursue their GEDs and all the coursework and classwork that he  
25 does.

1 MR. ELZA: And it's important to him.

2 And so -- so why do all these things matter? Because  
3 there is so much good in a person. He has found himself in an  
4 incredible mess that has lasted years and years. You know, our  
5 goal, and I think the Court saw this at trial, we -- I hope the  
6 Court saw this at trial. We tried our best to do this  
7 honorably. It's hard to be on this side of the bar, but I hope  
8 that the way that we have presented this case have been in line  
9 with the person that I represent and his morals and how he sees  
10 the life. We ask the Court for any -- any mercy, any  
11 consideration, but most importantly we ask the Court to  
12 understand who the rest of Mandis Barrow is.

13 Thank you.

14 THE COURT: Thank you, counselor.

15 And the Court will note for any record on appeal that  
16 at all times defendant received capable and effective  
17 assistance of counsel. I would characterize Mr. Elza's  
18 representation as impeccable in many ways, and I want to thank  
19 Mr. Elza for taking this opportunity to represent this  
20 defendant and to do so with the highest standards of  
21 professionalism.

22 So with that, I'll invite Mr. Barrow -- let me first  
23 explain to Mr. Barrow his right of allocution and then I'll  
24 give him a full and complete opportunity to allocute if he  
25 exercises that right.

1           Mr. Barrow, you have an absolute right to allocute at  
2       federal sentencing. Allocution simply means that you may tell  
3       the Court any information you think is important to the  
4       sentencing decision. You may read aloud or rely upon this  
5       written allocution marked as Defendant's Exhibit A. You may  
6       make arguments to the Court. You may present facts for the  
7       Court to consider. You have an absolute right to allocute at  
8       federal sentencing, but you can never be forced, compelled or  
9       coerced into allocution.

10           Having consulted with your attorney about the concept  
11       of allocution and your rights, do you choose to exercise your  
12       right of allocution?

13           THE DEFENDANT: Yes, Your Honor.

14           THE COURT: You may proceed.

15           (Counsel and defendant conferred off the record.)

16           THE DEFENDANT: Your Honor, the affidavit that I  
17       actually wrote, I'm going to take my attorney's advice as far  
18       as that. He already advised me that you have it, that you've  
19       read over it. So I won't take up much more of the Court's time  
20       rereading it, but there is some things that I would like to  
21       address to the Court.

22           THE COURT: Feel free to highlight anything in that  
23       Exhibit A that you want to draw attention to and to use this  
24       time for any other allocution you choose to enter.

25           THE DEFENDANT: Yes, sir.

1           Your Honor, I want the Court to understand who I am.  
2    You know, my attorney, he laid some things out to the Court  
3    that was all factual, but no one has known the fear that I've  
4    been in since 2017. You know, the prosecution paints me out to  
5    be an individual that had been receiving large amounts of  
6    drugs, receiving these proceeds, enlisting individuals, and  
7    that just is -- that's not me.

8           And so I want the Court to understand that this all  
9    began with Victor Chavez and that I was doing my time in  
10   federal prison and an opportunity was presented to me to get  
11   out early. And I knew the legal system, so I advised him of  
12   the legal system, and because of that I was rewarded. And I  
13   thought that that's as far as it would go. And so he actually  
14   was released before I was, him and another individual that was  
15   a part of that cooperation agreement.

16           And so once I had been released, little did I know  
17   that Victor was going to come back into my life that quickly.  
18   So as the -- Mrs. Bell noted, that true enough there was a  
19   delivery or an arrest made in Houston in 2017 while I was still  
20   technically on what she said was community supervision. I was  
21   not at the halfway house. I was on home confinement.

22           And so while I was on home confinement, Victor and  
23   some of his people came to my house, and at that particular  
24   moment I had no choice on what to do. I was not on a leg  
25   monitor, but I was reporting to the actual halfway house on my

1 phone. So when I went to work, I reported. When I came back  
2 in from work, I reported. And I was always at my home.

3 But that night when I had to leave the day before  
4 Thanksgiving, instead of me being able to spend time with my  
5 family, the entire -- all those years I had been away from,  
6 Victor and his people made me go to Houston. It was not a  
7 choice that I had, nothing that I could do about it.

8 Once I got to Houston with individuals that he had  
9 actually provided to ride with me -- I was basically like a  
10 mule in the situation, but I had no say-so on who I was  
11 meeting, anything like that. And so I didn't know that he was  
12 the target of the investigation. All I knew was he told me and  
13 he made it very, very specific, very, very clear that this was  
14 the only way that I was going to be able to work off that debt  
15 for my incarceration, for me actually being released. I didn't  
16 know it was going to be a debt for me. I thought because I  
17 helped him be released, that I was going to be in the clear  
18 from that.

19 So that entire night I stayed there in Houston,  
20 calling home, trying to tell everyone like look, man,  
21 everything's okay, I'm -- right now I'm safe, but in reality it  
22 was far from it. I was there with the Sicario that had two  
23 firearms. She -- Mrs. Bell alluded to that. I was there with  
24 these Sicarios that had two firearms, and when the police did  
25 try to apprehend me that day and I saw it, I took that as my

1 way out and I went on a high speed chase because at the moment  
2 I was afraid that this Sicario was going to shoot.

3 And so I didn't give him an opportunity to know that  
4 the police were behind us with the lights. So I took off as  
5 fast as I could in the car and I ran it into a pole and jumped  
6 out running. And little did I know that this individual was  
7 going to try to turn State's evidence on me and make it like it  
8 was my product, but the prosecutor at that particular moment  
9 knew exactly what the scenario was and what position I was in  
10 because she knew that Victor was already under investigation.

11 I had no opportunity to go back home to even be able  
12 to check in and report that next morning. The entire time they  
13 could care less about my well-being. The only thing that they  
14 cared about was me delivering that substance. It's like I've  
15 been a mule for this organization in their regards on that  
16 particular case, and they -- from that day forth, my entire  
17 hands have been tied. It's always threats after threats after  
18 threats after threats after threats.

19 (Counsel and defendant conferred off the record.)

20 THE DEFENDANT: I'm not -- yeah, I'm not -- what I'm  
21 saying is nothing with this charge. I'm talking about Houston,  
22 the Houston charge from 2017.

23 So from that day forth, the prosecutor, Mrs. Anna  
24 Bell, knows that these threats have been on my life since that  
25 day for that same day. I showed the agents everything in my

1 phone. I gave them all the authorization to get into my phone  
2 during that interview. Even the agents themselves told me in  
3 the interview -- and you can actually have -- we actually have  
4 even at trial that there were hits on my life. That was  
5 presented to them and that everyone seems as if they're  
6 ignoring it.

7 And that's the part that's a shame because when I  
8 went to the Government to try to deal with this situation, I  
9 felt like in the end that this was going to be my way finally  
10 of being free from these individuals, and I sought their help  
11 because they told me to give them the information in good  
12 faith. And that's what I did.

13 She wasn't -- Mrs. Anna Bell, the ASU -- AUSA, was  
14 not present at that particular meeting. They told me that she  
15 was busy, that there was no way that she was going to be able  
16 to go there. I wanted absolute immunity. I was instructed to  
17 hire the attorneys that was supposed to do the proffer for  
18 Victor Chavez, and that day that I hired the attorneys to do  
19 this for Victor Chavez, that was on December 15th, 2021. She  
20 was present. The agents were present. And so I didn't  
21 understand exactly what was going to go on in that proffer, so  
22 I wanted absolute immunity just so that I could cooperate with  
23 them.

24 So little did they know -- and now it was brought out  
25 at trial, Your Honor, it was brought out at trial that Vincent

1 Chavez, that he had made up some of these -- these stories  
2 because he also had been told what to say. When Victor Chavez  
3 was inside the county -- Randall County Jail when I was out  
4 before I came here -- before I got incarcerated, he sent  
5 someone out there from the Randall County Jail. Phone records  
6 will prove this, that he bonded an individual out. And when  
7 this individual was bonded out, he came to me with this  
8 information of what it was that I was supposed to say. His  
9 girlfriend that is now charged with a particular crime had  
10 Victor's phone, and the phone that he actually had, that  
11 information was relayed to me to give to the prosecutor and the  
12 agents.

13 Everything from my hearing, from that interview was  
14 information that was given to me solely from Victor Chavez and  
15 Vincent Chavez. And while I was out there, Vincent Chavez's  
16 family, his mothers, his sisters, the uncles, they all  
17 threatened me by phone and actually came to the house and even  
18 threatened my stepdaughters and Stephanie herself. And I  
19 alluded that to the agents. They have this on the record from  
20 my cell phone, violent text messages, not only from them but  
21 also from Victor Chavez's brothers.

22 There's been no way around this. When I was out  
23 there I made a 9-1-1 call frantically one night from being  
24 chased on my way home. And I called and called and called and  
25 no one -- no officers would pull over and I'm driving over



1 the -- excess over 100 miles an hour until I saw some lights of  
2 two squad cars pulled over, and then just frantic, just  
3 terrified, I went in there where they had the car pulled over  
4 just to get away from the individuals that was chasing me.  
5 I've been going through this this entire time since 2017,  
6 trying to free myself from one individual and one individual  
7 only, and that was Victor Chavez. Vincent Chavez was just his  
8 right-hand man that was actually there far before I ever came  
9 out here, before I was ever released.

10 And so here it is I'm being told what to say at this  
11 interview, that now the Government is making a position that  
12 Vincent Chavez was a smallwig, but I have the affidavit here in  
13 front of me that they actually presented to get the search  
14 warrant to raid Vincent Chavez's house that says that he was a  
15 multi-pound distributor right in front of me. But yet, they're  
16 making a stance that this is not accurate, that I recruited  
17 him. I didn't even know this guy.

18 And then this Court has probably had at least a  
19 thousand federal cases. My name has never been mentioned in  
20 anyone's proffers and anyone's debriefings at all because I was  
21 never around here selling anything. I was never purchasing any  
22 drugs, never moving any drugs, and that's not ironic. You have  
23 to think about this, Your Honor. In a town this small, in a  
24 city this small, with someone moving drugs of that substantial  
25 amount, why is it that my name has never been brought up, Your

1 Honor, that now these two individuals come up with a story that  
2 has been out here at Randall County, has been on the phones  
3 actually coming up with these stories of what to say and what  
4 to do, even from my December 16th, 2021 interview.

5 And so now I stand in front of you right now facing a  
6 substantial amount of time, possibly take the rest of my life  
7 away for something that was never even factual, that I was only  
8 told what to say because Vincent Chavez and Victor Chavez only  
9 cared about one thing and it was themselves. And so I stand at  
10 trial -- so I stood at trial, and that was not something that I  
11 wanted to do. I didn't want to have to go to trial on this.  
12 The Government has been in positions where people have  
13 cooperated with them and they stayed out there on the streets.  
14 That was not offered to me. That opportunity was not given to  
15 me.

16 But everything is always made to make me look bad.  
17 But the agents themselves testified at my trial, Your Honor,  
18 and not just testified but testified to information that was  
19 inaccurate and that the prosecution actually held. And the  
20 inaccuracies was, Your Honor, that on the December 16th  
21 interview, those agents that were involved with Koval,  
22 Blackerby and Special Agent Brown, those three agents came into  
23 a discussion with me to see how I could get these drugs from  
24 this DTO.

25 Once this information was made, they presented an

1 opportunity to where they said so much money could be presented  
2 and could I actually secure the deal, and I had to tell them  
3 that it was going to take much more money than that. There  
4 could not be something that small. And so ten days later, nine  
5 days later, I'm going to visit my family in Fort worth, and on  
6 my way to visit my family I get a phone call from the DTO. I  
7 get the phone call from the DTO.

8 And so the agent himself already knew that this was a  
9 cooperation agreement. In my mind, I thought that this is what  
10 was going on. Because for so many times with the Amarillo  
11 Division, the Midland/Odessa Division and the Lubbock Division,  
12 these agents had already made their approvals through the  
13 government, through the AUSAs and the prosecutors there. And  
14 so I immediately thought it was the same thing.

15 So he testified at the trial, Special Agent Brown,  
16 that a phone call did not take place, and this was factual,  
17 that he had text messages that he instructed me to make, a  
18 phone call that he instructed me to actually make that we  
19 actually discussed back and forth. I actually had to pull over  
20 on the highway while I was driving. But he testified that that  
21 was not the case, that it never happened.

22 And so I'm not privileged to be able to go and grab  
23 my phone and look up all of the threats. I'm not privileged to  
24 be able to go back and tell the Court hey, look, look at this  
25 phone call that was made with Special Agent Brown. Look at

1 these text messages that was made with Special Agent Brown.  
2 Look at this situation where I told Special Agent Brown and the  
3 other two agents, Koval and Blackerby, look, this is the  
4 cooperation that was done with El Paso before this was ever  
5 even a federal case.

6 And yet we're standing here today and there's not  
7 even been one attempt at a motion presented by the Government  
8 in my behalf, and it just shows an act of bad faith and bad  
9 precedence with this Court, with the prosecution, because who  
10 in the world would be in a situation to where they're  
11 cooperating to this extent and never receiving anything for it?  
12 And that the agents knew about it and then they made it very,  
13 very clear, we don't want you working with anyone else. We  
14 only want you working with us. But then they deny that it was  
15 ever an opportunity for me to ever be presented with this and  
16 they made it a statement saying that it was very, very clearly  
17 made to me. And it was never made to me. The first time I  
18 heard it was at trial.

19 And there's something that I wanted to address, Your  
20 Honor, and I need your help because I don't know this, I'm  
21 unfamiliar with this. And so I've talked to my attorney about  
22 it briefly, and we haven't just really had a lot of time to  
23 really discuss the matter.

24 So at trial, when we were having the venire panel, we  
25 were -- my codefendant was on the same table that Mrs. Bell is

1 on right now, but she was on the far end of the table, to your  
2 far left. And I was sitting around where Mrs. Bell was. And  
3 so every time we did the housecleaning, Your Honor, like right  
4 now we would be faced -- you -- facing you and we would discuss  
5 everything, and then when the panel came in, we were placed on  
6 the other side of the table so that way we could be addressing  
7 like the members are out there in the gallery right now.

8 And so I felt that there was a way to protect me and  
9 my codefendant from any assumptions made against us, and so I  
10 had the opportunity to be provided with clothing from my  
11 attorney and my family to make sure that there was no unfair  
12 assumptions made. But yet, right when it was time to bring the  
13 actual jury pool in, the actual jurors that actually made the  
14 cut, I don't know if it was a mistake, Your Honor, but I was on  
15 this side of the table. I was actually standing right where  
16 Mrs. Bell is sitting right now. And so the jury was paraded  
17 right through here and they had to go to -- right through here  
18 to the actual jury room, but before they went, they actually  
19 got their seats here.

20 And so one by one those jurors came through and they  
21 actually got to look at me in these shackles. And so right  
22 away I was concerned about was this a situation that would harm  
23 me later by one of these jurors or multiple jurors thinking  
24 that I was already guilty. And I wasn't familiar with the  
25 process.

1 THE COURT: I'm familiar with the nature of your  
2 complaint. It appears in your written allocution at page 4.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Quote, "The jury paraded right down the  
5 aisle with me directly in front of them, shackled the way that  
6 I was in full view of the wrong side of the table looking like  
7 I was already guilty."

8 The Court finds that defendant's recollection of his  
9 dress and restraint is incorrect. From voir dire to verdict,  
10 this Court, court staff, marshals, prosecutors, defense counsel  
11 and the court security officers worked tirelessly to ensure  
12 that the table provided cloaking and that your manner of dress  
13 and the way that you were seated at that table were all  
14 designed by all involved to ensure that we didn't communicate  
15 anything by the nature of your dress and restraints.

16 In fact, I worked tirelessly with the marshals, the  
17 court security officer, the courtroom deputy and the clerk's  
18 office to ensure that the configuration of the room, that the  
19 cloaking of the table and the placement of your restraints at  
20 no time were within view of venire members and the eventual  
21 jury. And because of the way this Court is configured, there's  
22 little to zero probability that had any impact on your case,  
23 either at the voir dire phase or when the jury was seated.

24 So we carefully monitored that at all times, and I  
25 find that Mr. Elza in particular was diligent in ensuring that

1 your manner of dress and the way in which you were restrained  
2 would never affect any impression that venire members or  
3 eventual jurors had about you or your case. So I understand  
4 the nature of your concern, but I observed it from this perch  
5 from start to finish and at no time did that have any bearing  
6 on the way people viewed you. So I want to reassure you that I  
7 worked very closely with defense counsel, the Government and  
8 all of the court staff to make sure that that would have no  
9 affect on your case.

10 (Counsel and defendant conferred off the record.)

11 THE COURT: And at this time, do you have any  
12 additional allocution that you would like to provide in  
13 addition to Defendant's Exhibit A which I have admitted, I have  
14 read and I will give weight to?

15 THE DEFENDANT: Your Honor?

16 THE COURT: Please proceed.

17 THE DEFENDANT: Okay. I would just like to take this  
18 time right now to -- just to thank you. You know, this  
19 process, like I told you, I didn't want to be here. I  
20 apologize for this Court and for the members that have to  
21 actually go through this process. And I mean that from the  
22 bottom of my heart, you know. This situation, it is what it  
23 is, we have to address it. I'm standing here before you right  
24 now and I'm basically asking your mercy. I'm basically asking  
25 for an opportunity at a life that I've tried my best at times,

1 you know, to do the right thing. And it bit me -- it bit me  
2 this time. I trusted the Government and the Government didn't,  
3 in my own view, act in good faith towards me.

4 But regardless, I'm here in front of you and I take  
5 this situation seriously and I don't take it lightly. And from  
6 day one since I've been here, I've been doing everything that I  
7 can to try to make myself to be a better man regardless of my  
8 location. So I just thank you for this opportunity.

9 THE COURT: Thank you, Mr. Barrow. The Court will  
10 give appropriate weight to your oral allocution. I'll consider  
11 that a supplement to the written allocution that you submitted  
12 as Defendant's Exhibit A.

13 At this time, does counsel for the defendant know of  
14 any reason why lawful sentence may not be imposed?

15 MR. ELZA: No, we're ready to proceed with sentence,  
16 Your Honor.

17 THE COURT: Any reason known to the Government?

18 MS. BELL: No, Your Honor.

19 THE COURT: Having considered the permissible factors  
20 set forth at 18 U.S.C. Section 3553(a), the advisory sentencing  
21 guidelines, the conduct admitted in the factual resume, the  
22 capable, effective and impeccable assistance of defense  
23 counsel, and all mitigating and aggravating factors, it is the  
24 judgment of the Court that the defendant Mandis Charles Barrow  
25 is hereby committed to the custody of the Federal Bureau of



1 Prisons for a period of life. This represents a sentence  
2 within the advisory guidelines range in this case.

3 The Court does not order a fine because defendant  
4 lacks the financial resources or future earning capacity to pay  
5 a fine. The Court, however, does order a mandatory special  
6 assessment of \$100 as to Counts 1, 2 and 3 for a total of \$300,  
7 which is due and payable immediately.

8 This sentence shall run consecutively to any sentence  
9 which may be imposed in case number 2:22-cr-001-Z-01 presently  
10 pending in the Northern District of Texas Amarillo Division.  
11 This case involves a pending revocation of supervised release.

12 The Court states that it does not order restitution  
13 because there are no identifiable victims other than society at  
14 large.

15 The Court further orders that upon release from  
16 imprisonment the defendant shall be placed on supervised  
17 release for a term of five years as to each count of  
18 conviction, which will run concurrently.

19 while on supervised release, defendant shall comply  
20 with the mandatory conditions listed 18 U.S.C. Section 3583(d)  
21 and Section 5D1.3(a), the standard conditions listed at Section  
22 5D1.3(c) of the Guidelines Manual, and the following  
23 discretionary, special and additional conditions of supervised  
24 release which are derived from Sections 5D1.3(b), (d) and (e)  
25 of the Guidelines Manual.

1           Number one, the defendant shall participate in  
2     outpatient mental health treatment services as directed by the  
3     probation officer until successfully discharged. These  
4     services may include medications prescribed by a licensed  
5     physician. The defendant shall contribute to the cost of  
6     services rendered copayment at a rate of at least \$40 per  
7     month.

8           Number two, the defendant shall participate in an  
9     outpatient program approved by the probation officer for  
10    treatment of narcotic drug or alcohol dependency that will  
11    include testing for the detection of substance use, abstaining  
12    from the use of alcohol and all other intoxicants during and  
13    after completion of treatment and contributing to the cost of  
14    services rendered copayment at the rate of at least \$40 per  
15    month.

16           Now, Mr. Elza, these conditions of supervised release  
17    were set forth in the written notice of intent to impose  
18    conditions of supervised release. Did you and your client  
19    receive a timely copy of that document?

20           MR. ELZA: We received them yesterday and were able  
21    to go over them last night and sign them.

22           THE COURT: And did you specifically explain the  
23    discretionary, special and additional conditions of supervision  
24    reflected on page 4?

25           MR. ELZA: I did, Your Honor.

1 THE COURT: And does your client have any objections  
2 to the conditions of supervised release stated in the written  
3 notice and pronounced orally at sentencing?

4 MR. ELZA: No, Your Honor.

5 THE COURT: And, Ms. Bell, did the Government receive  
6 a timely copy of that notice?

7 MS. BELL: Yes, Your Honor.

8 THE COURT: And does the Government have any  
9 objections to the conditions of supervision stated therein?

10 MS. BELL: No objections.

11 THE COURT: Any objections to the Court's  
12 pronouncement of the conditions of supervised release?

13 MS. BELL: No, Your Honor.

14 THE COURT: The notice and conditions of supervised  
15 release stated therein are hereby adopted, ordered and imposed  
16 as just pronounced by the Court. The Court did receive a fully  
17 executed copy of that notice. It is dated January 18, 2024.  
18 It bears the signature of the defendant, defense counsel and  
19 this Court. It's made a part of the record in this case and in  
20 any record on appeal.

21 The Court will now state its reasons for imposing  
22 this particular sentence.

23 Here, the sentence is sufficient but not greater than  
24 necessary to comply with the statutory purposes of 18 U.S.C.  
25 Section 3553(a), specifically the reasons previously stated by

1 the Court in adjudicating defendant's motion for downward  
2 variance. The Court incorporates by reference those reasons as  
3 the Court's statement of reasons.

4 For every reason identified as aggravating in this  
5 case specific to 3553(a) factors that apply, the Court did  
6 consider the significant mitigating factors reflected in the  
7 sentencing memorandum and also in the PSR, and the Court does  
8 find defendant received capable and effective representation in  
9 presenting those mitigating factors throughout the sentencing  
10 process. And the Court specifically considered defendant's  
11 difficult upbringing reflected in PSR paragraphs 54, 55 and 56.

12 The Court imposed a term of supervised release  
13 because it'll provide an added measure of deterrence and  
14 protection. Guided by the Fifth Circuit's opinion in Diggles  
15 and cases applying same, this Court adopted, imposed and  
16 ordered the discretionary conditions of supervised release  
17 because they are consistent with Section 3583(d)(1), (d)(2) and  
18 (d)(3), and the Court expressly states that the discretionary  
19 conditions of supervised release involve no greater deprivation  
20 of liberty than reasonably necessary. This is a requirement of  
21 3553(a)(2)(B), (a)(2)(C) and (a)(2)(D).

22 Regarding the denial of federal benefits, as noted in  
23 PSR paragraphs 88 and 89, defendant, having been convicted of a  
24 second drug distribution offense, shall be ineligible for any  
25 and all federal benefits for up to ten years at the discretion

1 of the Court. However, this Court is declining to exercise its  
2 discretion in this case and expressly declines to make  
3 defendant ineligible for federal benefits. Stated differently,  
4 the Court is exercising its discretion in the opposite  
5 direction and declining to deny federal benefits to defendant.

6 The Court has now stated the sentence and its reasons  
7 therefore.

8 Does defense counsel have any objection to the  
9 statement of sentence?

10 MR. ELZA: No, Your Honor.

11 THE COURT: Any objection to the statement of  
12 sentence from the Government?

13 MS. BELL: No, Your Honor.

14 THE COURT: The Court hereby orders the sentence  
15 imposed as stated.

16 Finally and emphatically, even if the correct  
17 advisory guidelines range was not considered, this Court would  
18 have imposed the exact same sentence had it not made the error  
19 and it would have done so for the exact same reasons given  
20 during the sentencing hearing, regardless and irrespective of  
21 the applicable advisory guidelines range.

22 Stated differently, had defendant prevailed on his  
23 objections affecting the calculation of the guidelines range  
24 culminating in a lesser guidelines range, this Court would have  
25 used the tool of upward variance to arrive at the exact same

1 sentence for the exact same reason, life imprisonment.

2 Additionally, this Court presided over the  
3 suppression hearing, pretrial conference, trial and this  
4 sentencing and was thereby well acquainted with the relevant  
5 facts, evidence, testimony, exhibits and jurisprudence  
6 necessary to balance the Section 3553(a) factors and reach this  
7 result, life imprisonment.

8 Now, Mr. Slater, I will hear your requested  
9 recommendations for medical care, vocational training and  
10 residential placement.

11 Beginning with medical, PSR paragraphs 60, 61 and 62,  
12 alongside the addendum, reflect that defendant has suffered  
13 from mental health issues; some orthopedic issues, including a  
14 hernia; and that defendant is expressly interested in mental  
15 health treatment and substance abuse treatment.

16 Are there particular programs you would request?

17 MR. ELZA: No, I think it starts with an evaluation  
18 to see what he needs. My -- it's not my understanding -- and I  
19 know that he will follow the recommendations up to and  
20 including mental health treatment, individual, group, possibly  
21 medication if that's recommended. These go back a long ways  
22 and have not been treated, so we don't really have a starting  
23 point. I think we need that initial evaluation that the Bureau  
24 of Prisons can provide.

25 THE COURT: Okay. Any objection from the Government?

1 MS. BELL: No, Your Honor.

2 THE COURT: The Court does recommend that the  
3 defendant be allowed to participate in a full medical  
4 evaluation, if necessary be considered for initial placement in  
5 a Federal Medical Center or FMC to address the myriad  
6 conditions reflected in PSR paragraphs 60, 61, 62 and the  
7 addendum. The Court further recommends that the defendant be  
8 allowed to participate in a mental health evaluation to  
9 identify possible counseling and treatment for the myriad  
10 traumas that appear in the PSR and addendum, and if prescribed  
11 and monitored by a licensed physician, mental health  
12 prescription drugs if necessary.

13 Finally, the Court does recommend that defendant be  
14 allowed to participate in the most intensive, if possible,  
15 Residential Drug Abuse Program, and the Court finds that  
16 defendant is a good candidate for drug rehabilitation treatment  
17 and substance abuse treatment given his multiple statements to  
18 the probation officer and this Court that he is interested in  
19 same.

20 There is no request for vocational training, but I  
21 know defendant is manifestly intelligent. I know that he has  
22 some schooling up to this point. I do want to give you an  
23 opportunity to request coursework or any sort of training, be  
24 it vocational or more purely scholastic.

25 MR. ELZA: He is interested in any scholastic

1 opportunities that are available to him, be those legal-based  
2 would be the first preference or business-based. He is, and I  
3 skipped that in my closing statement, he's incredibly bright,  
4 incredibly bright, better research skills than most any new  
5 lawyer.

6 THE COURT: Okay. Any objection, Ms. Bell?

7 MS. BELL: No, Your Honor.

8 THE COURT: The Court does recommend that the  
9 defendant be allowed to pursue any and all education deemed  
10 consistent with his security classification and eligibility to  
11 include scholastic training in fields of interest, including  
12 business, ministry and other fields. The Court finds the  
13 defendant is an ideal candidate for continued vocational and  
14 educational training given his manifest intelligence and his  
15 participation and completion of programs through the detention  
16 period.

17 Regarding residential placement, I know that  
18 defendant has family in the Panhandle and also in the  
19 Dallas/Fort Worth Metroplex.

20 Are you prioritizing proximity to family or specific  
21 programs in requesting particular facilities?

22 MR. ELZA: Based on -- we talked about this a lot.  
23 Based on him, his connections here -- he does have some family  
24 in the Arizona -- not the Arizona, I'm sorry -- in Arizona, and  
25 from a distance perspective probably would benefit from one of



1 the facilities in Tucson.

2 THE COURT: Okay. So I have a list of facilities  
3 that have residential drug programs. That includes FCI  
4 Phoenix, but is it your understanding that there is also a  
5 facility at Tucson that would match his likely security  
6 classification?

7 MR. ELZA: Actually, I went through the list and I  
8 overlooked Phoenix. That would actually be the preference.

9 THE COURT: Okay.

10 MR. ELZA: You know, we went through it. I just  
11 missed that last night.

12 THE COURT: Okay. So I can do Phoenix and then in  
13 the alternative Tucson.

14 Any objection, Ms. Bell?

15 MS. BELL: No objection.

16 THE COURT: This Court does recommend for reasons of  
17 separation from the Northern District of Texas and Amarillo  
18 Division that the defendant be allowed to serve this term of  
19 incarceration in the western region of the Bureau of Prisons  
20 system, if possible FCI Phoenix, in the alternative FCI Tucson,  
21 and at all times this recommendation is subject to the Bureau  
22 of Prisons exercising its discretion to determine defendant's  
23 security classification and eligibility.

24 And, Mr. Barrow, do you understand that I made as  
25 many recommendations as possible for your continued medical,

1 vocational and residential care, but it's ultimately the Bureau  
2 of Prisons that will decide your security classification and  
3 eligibility? Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay. The Court notes that this  
6 defendant has been found guilty on all counts of the  
7 superseding indictment. However, I do want to allow the  
8 Government an opportunity to dismiss any pending indictments or  
9 charges that need to be dismissed as to defendant -- as to this  
10 defendant only.

11 MS. BELL: There is nothing to dismiss, Your Honor.

12 THE COURT: Okay. Now, Mr. Barrow, if you decide to  
13 appeal, your notice of appeal must be filed with this court  
14 within 14 days of the date judgment is entered in your case or  
15 within 14 days of the Government entering its notice of appeal.  
16 And if you do decide to pursue that appeal, you have an  
17 absolute right to apply for leave to appeal in forma pauperis  
18 or IFP. This means that you may be able to pursue that appeal  
19 at no cost to yourself but instead at a cost to the Government.

20 Mr. Elza, did you and your client receive a timely  
21 copy of the notice of right to appeal?

22 MR. ELZA: Yes, we received it yesterday, had an  
23 opportunity to go over it and sign it last night.

24 THE COURT: And did you specifically explain to the  
25 defendant the 14-day period that applies to the notice of

1 appeal?

2 MR. ELZA: I did, Your Honor.

3 THE COURT: And does your client have any objections  
4 to the remaining appellate rights arising under this notice and  
5 described in this notice?

6 MR. ELZA: No, he understands those are his appellate  
7 rights.

8 THE COURT: Okay. And, Ms. Bell, did the Government  
9 receive a timely copy of the notice of right to appeal?

10 MS. BELL: Yes, Your Honor.

11 THE COURT: And does the Government have any  
12 objections to the appellate rights described in that notice?

13 MS. BELL: No, Your Honor.

14 THE COURT: The Court did receive and did review a  
15 fully executed copy of the notice of right to appeal. It bears  
16 the signature of the defendant, defense counsel and this Court.  
17 It is dated January 18, 2024.

18 And, Mr. Barrow, I know you've familiarized yourself  
19 with law libraries and those resources. Please be mindful of  
20 the distinction between this notice of right to appeal and the  
21 notice of appeal. That second document must be filed within  
22 that 14-day period we discussed. If you have questions about  
23 the notice of appeal, please consult with counsel. He can  
24 explain deadlines and deliverables.

25 Is there anything further from the Government?

1 MS. BELL: No, Your Honor.

2 THE COURT: Anything further from the defendant?

3 MR. ELZA: No, Your Honor.

4 THE COURT: Mr. Barrow, you are hereby remanded into  
5 the custody of the United States Marshal. We are adjourned. I  
6 wish you good luck.

7 The Court stands adjourned for the remainder of the  
8 day. Counsel are excused.

9 (The proceedings adjourned at 4:20 p.m.)

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C E R T I F I C A T E

I, Shayna Montgomery, United States Court Reporter for the United States District Court in and for the Northern District of Texas, Amarillo Division, hereby certify that the above and foregoing contains a true and correct transcription of the proceedings in the above entitled and numbered cause.

WITNESS MY HAND on this 7th day of April, 2024.

/s/Shayna Montgomery  
SHAYNA MONTGOMERY, RMR, CRR  
United States Court Reporter  
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